COMMERCIAL PRECEDENTS

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COMMERCIAL PRECEDENTS

SELECTED FROM THE COLUMN OF

REPLIES AND DECISIONS

OF THE

NEW YORK

JOURNAL OF COMMERCE

AND

COMMERCIAL BULLETIN

AN ESSENTIAL WORK OF REFERENCE FOR EVERY BUSINESS MAN.

BY

CHARLES PUTZEL, A.B., LL.B. OF THE NEW YORK BAR.

HARTFORD, CONN.
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PREFACE.

" The commercial, equally with other branches of the common law, grew up out of personal usage, and the principle of growth or adaptation to the wants of the commercial world, remain inherent in the system." Estimating the importance of this book with reference to the amount of property afloat in the shape of bills, notes, and checks, the magnitude of our shipping interests, the complexity of our business in all its branches, there never has been a time when it called for greater accuracy and discrimination, or invited the attention of merchants and professional men with motives of equal urgency.

The New York Journal of Commerce and Commercial Bulletin, for more than three-quarters of a century, has been the recognized authority throughout this broad land in commercial matters, viewed in the most comprehensive sense of the term. Among the departments of this journal, its editors have for many years devoted one or more columns daily, owing to the demands of many thousand subscribers, to answering the questions of these subscribers on the important and every-day usage and principles employed in every known business of the civilized world. From these columns, known as " Replies and Decisions," I have selected with great care those which are in vogue to-day and of vital importance to every business man as well as to those who have relations with business men.

The selections, comprehending the usage and principles in practice in the numberless branches of business, are arranged alphabetically, according to the subject-matter, and under their appropriate heads and subdivisions; also a carefully arranged index, so subdivided as to enable the most indifferent reader to find any particular question or subject-matter desired, — the number of the question and the page on which it occurs being given. I have endeavored to avoid repetition of matter, and present the important and useful " Replies and Decisions " as they appeared in the paper, with but a few changes here and there, and in the main, of no great moment,— and hence disclaim any

originality for the subject-matter. The selections taken from the *New York Journal of Commerce and Commercial Bulletin* are from the files of the paper of the past quarter of a century and are more than amply sufficient to embrace the many heads of subject-matter as listed in the table of contents. They contain the usage, principles, and authorities, and are free from technical language save where technical terms are absolutely necessary, and so as to be understood by every one. This book will by no means rank among commercial law books, for it does not contain the principle or the theoretical basis of such a work, and it is far from its province. It is the actual, applied and every-day usage of commerce which makes this an essential work of reference for every man in business, and applicable to all the states throughout the Union, for it is the common law, and wheresoever the statutes of a particular state govern the question, the name of the state is given in the body of the book, as well as in the index. Where the matter should appear under more than one head in the index, it is cross-indexed, so as to insure its being readily found as well as to avoid repetition in the body of the book. The arrangement of the subject-matter, including the classification of topics and a complete index of every question, will be found to be highly practical in its simplicity.

From the encouragement given by bankers, insurers, exporters and importers, jobbers, manufacturers, physicians, lawyers and all classes of business men to this undertaking, it is to be hoped that this compilation may be of great and general use to the business and professional men throughout the United States.

CHARLES PUTZEL.

NEW YORK.

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TO THE READER.

In the back part of this volume is a full alphabetical Index of the 1499 cases contained in the work.

Any particular case can be easily found by looking in the Index under the appropriate head and then referring to the number of the question and number of the page as given.

THE PHILADELPHIA
MAY 15 1903
MUSEUMS

COMMERCIAL PRECEDENTS.

ACCOUNTS AND ACCOUNTINGS.

1. A and B are partners in business. The former's interest is two-thirds while the latter's is one-third. A is desirous of purchasing B's interest, and after finding the net resources how shall the two interests be determined?

A. The value of this business being known, and it being agreed that A is now owner of two-thirds of that value, and B of the remaining one-third, if A wishes to buy B's interest in the business we do not see that anything further is required except for A to pay or secure to B the value of B's interest, which is one-third of the value of the whole.

2. I am interested in an estate, the executor of which is a lawyer who is keeping the same in continual litigation. Can I as a legatee compel him to make settlement, compromise any and all claims which may be in litigation and wind up the estate?

A. The Surrogate may, in his discretion, make an order at any time requiring an executor or administrator to render an intermediate accounting, "upon the petition of a creditor or any person entitled to a legacy or other pecuniary provision, or a distributive share, praying for a decree directing payment thereof." After the expiration of a year the Surrogate has no further discretion in the matter, but upon the application of any of the persons described above he must order an accounting on the single fact being shown that the applicant has a demand as creditor, legatee or next of kin. Upon such an accounting it would appear why the legacies had not yet been paid and the estate settled, and the Surrogate, upon good cause shown, would direct the executor to compound or compromise the claims out of which the litigation involving the estate arose.

3. Twenty years ago B was made by will trustee of a fund, interest of which was to be expended in caring for a ward of the testator, and at the death of the ward the fund was to revert to the original estate. The testator died, his estate was settled, the fund paid to the trustee and the executor discharged by the Surrogate. The ward is now dead, and the fund is about to be divided among the original heirs. Must the trustee and executor make an accounting before the Surrogate, furnish vouchers, etc., or can the money be divided and paid direct to the heirs without proceeding before the Surrogate?

A. If the trustee of this trust is certain that there are no creditors with legitimate claims against it, and if the beneficiaries are all of age and willing to execute written releases, he may safely accept such releases and divide the fund without any order of court. He may safely do this, in any event, if he is certain of his ability to make such a division of the fund as the court would order if the matter were brought to its attention; for, if the court ever is appealed to it will simply order the fund distributed according to the court's understanding of the legal rights of the parties, and if this shall have been done beforehand the decision of the court cannot harm the trustee. As a rule, however, it is far better in all such cases for the trustee to ask for a judicial settlement of his account and a regular, formal discharge by the court.

4. What is the United States law which prescribes that books and accounts of firms in the United States must be kept in the currency of this country?

A. There is no United States statute known to us which prescribes that the books and accounts of firms doing business here must be kept in the currency of this country. The Government keeps its own accounts in that currency and those having business relations with it must render their accounts to it in the prescribed form. Accounts kept under the supervision of a court, or for submission to a court, such, for example, as those of executors, guardians, receivers, trustees in bankruptcy, etc., would also need to be

kept in the currency of the country, or at least, to be reduced to such currency before submission to the court. But in their transactions between themselves citizens or residents may cast up their accounts in any form of currency they find mutually satisfactory.

5. A and B have made a contract of copartnership for the term of one year. It is a manufacturing concern and B is the sole owner of the plant. Both contribute $7,000 for the carrying on of the business. A receives $25 weekly for his services and is entitled to one-quarter of the profits. B receives no salary, for he devotes only a few hours daily to the business, but is entitled to three-quarters of the profits. At the expiration of the contract, B is to continue alone, his partner retiring. Can A claim to be paid his share of capital and profits in cash, or can B compel him to take merchandise as settlement?

A. In the circumstances set forth by our correspondent either partner may summon the other before a court to give an accounting. Then the court may ascertain the value of the partnership property and of the interests of the respective partners, by reference or otherwise, and the judge may make such provision for the payment of the retiring partners, for their interest, as justice requires, with or without the appointment of a receiver, or a sale of the partnership property. If it appears that a sale can be made without a great sacrifice the court will generally order enough of the partnership property to be sold to pay the retiring partner in cash; otherwise an equitable division of the partnership property may be ordered.

ACKNOWLEDGMENTS.

1. What are the principal duties of notaries public and commissioners of deeds?

A. A notary public has authority under the statutes to demand the acceptance and payment of negotiable paper, and to protest it for non-acceptance or non-payment; "to exercise such powers and duties as by the law of nations and according to commercial usage, or by the laws of any

other government, State or country, may be performed by notaries," and also, "to administer oaths and affirmations, to take affidavits and certify the acknowledgment and proof of deeds and other written instruments to be read in evidence or recorded in the State." The statute further provides that "commissioners of deeds in the cities of the State shall have power to take proof and acknowledgment of all written instruments." It is also provided that "an oath or affidavit, required or authorized by law, except an oath to a juror or a witness upon a trial, an oath of office, and an oath required by law to be taken before a particular officer, may be taken before * * * a commissioner of deeds within the district in which the officer is authorized to act."

2. Can the signature of a mortgagee to a satisfaction piece of property in New York city when the mortgagee lives in New Jersey be acknowledged by a notary public and attorney-at-law in New Jersey and be accepted in recording the same?

A. It is provided by statute that "a mortgage, registered or recorded, must be discharged upon the record thereof, by the recording officer, when there is presented to him a certificate signed by the mortgagee, and acknowledged or proved, and certified, in like manner as to entitle a conveyance to be recorded, specifying that the mortgage has been paid, or otherwise satisfied and discharged." As to the nature of the acknowledgment and proof required, it is elsewhere provided that "the acknowledgment and proof of a conveyance of real property, within the State, may be made without the State, but within the United States, before * * * any officer of a State, authorized by the laws thereof to take acknowledgment or proof of deeds to be recorded therein."

ADMINISTRATORS.

(See also Executors and Wills.)

1. Mr. C died leaving no will. The widow was duly appointed administratrix and also guardian over her four minor children. Can she now sell some real estate in Brooklyn, belonging to the estate, without going through the form of a petition suit?

A. No person as guardian or administrator can sell real estate without an order from the proper court, issued upon evidence furnished, showing the necessity of such a sale to protect the interest of the minors who own the fee, or to furnish a supply for their necessities. Where a will empowers an executor to sell real estate, this may be done at his discretion without further formality.

2. How would a person settle up an estate of a person who died without leaving a will? The property referred to belonged to my grandmother. At the time of her death her husband (my grandfather) was living, but has since died. The heirs now are my three aunts, and a fourth one is dead but left several children, one of whom is dead but she also left two children, both of whom are under age. Besides these heirs was my father (also dead). My father left several children, one of whom is not of age. I had several uncles but they are all dead; they were also unmarried. Can we sell the property at auction?

A. The first step necessary to the settlement of an intestate's estate is to secure the appointment of an administrator. The Surrogate of the county, of which deceased was a resident at the time of her death, has power and authority to grant letters of administration, and application should be made to him. The administrator appointed, it becomes his duty to collect the effects of the estate, pay the debts, and under the direction of the Court make a just and equal distribution of the personal estate. The administrator may sell personal property at auction after advertisement of the sale.

ADMIRALTY.

(SEE ALSO SHIPPING.)

1. We are much interested in shipping. We notice regular advertisements like the following one:

"NOTICE.—All persons are hereby cautioned against harboring or trusting any of the crew of the Steamer ——, A. B. master, from Manzanillo, as no debts of their contracting will be paid by the master, owners or agents."

What is its effect?

A. When a vessel is elsewhere than in her home port, especially, the law recognizes the fact that her captain or crew may require absolute necessaries, for which they have no money to pay. It is to the interest of the vessel owners themselves that the necessaries be supplied in order that the vessel may be safely brought home; accordingly, if the merchants of the port have no notice to the contrary they may furnish such necessary articles to the captain and crew and charge them up to the owners of the vessel; they are also entitled to a lien upon the vessel to secure payment. It is to prevent this that such notices are published.

2. If a citizen of the United States goes to England and purchases a steamship which was built in England and brings her to this country, can he hoist the United States flag, carry merchandise from one United States port to another, and will he receive the protection of the United States?

A. No foreign built vessel unless captured in war, or wrecked and partially rebuilt in this country, can engage in such commerce, no matter who owns it.

AGENCY.

1. A fire insurance company employs a man as agent. This man is duly licensed by the Superintendent of Insurance, and proceeds to issue policies for the company. After collecting the premiums, instead of remitting to the company, he puts the money so collected to his own use. Can this man be arrested and dealt with as a criminal?

A. "A person who, having in his possession, custody or control, as a bailee, servant, attorney, agent, clerk, trustee, or officer of any person, association or corporation, or as a public officer, or as a person authorized by agreement, or by competent authority, to hold or take such possession, custody or control, any money, property, evidence of debt or contract, article of value of any nature, or thing in action or possession, appropriates the same to his own use, or that of any other person other than the true owner or person en-

titled to the benefit thereof, steals such property, and is guilty of larceny."

2. If an agent has kept his principal's goods insured throughout the year can he charge up the premiums to the principal in making up his final accounts at the end of the year, or is that an expense to be borne by the agent?

A. An agent having in his possession goods belonging to his principal is never bound to insure them at his own expense, unless he has expressly agreed to do so. Any outlay for the protection of merchandise is presumably to be borne by the owner. In ordinary cases the agent, if he is bound by custom or by the instructions of his principal to insure the goods, may always look to the principal to pay the premium.

3. A consigns to B, a commission merchant in Ohio, about 250 barrels of fresh apples, which B sells in small lots. B, after about two months, renders an account of sales for the entire lot without specifying the prices on any sales. Can A, under the law of Ohio, compel B to give the prices at which each and every lot was sold and give the names of the parties to whom the apples were sold?

A. An agent should remember always that the business he is engaged in is that of his principal. The principal is entitled to know every fact bearing in any way upon the transaction that is known to the agent. This is a rule of the common law. In Ohio, the State to which this merchandise was sent, it is reiterated and enforced by statute.

4. We are commission merchants representing a number of cotton cloth mills for the sale of their products. We received a telegram from one mill authorizing us to sell 100 bales at a certain price. The customer was seen at the earliest possible moment on the morning the telegram was in the possession of one of the firm, and about eleven o'clock that morning a telegram was sent to the mill stating that the goods had been sold. At 12:25 P. M. the same day a telegram was received from the mill telling us to withdraw the quotations. The mill states that this telegram left them early that day, and that the withdrawal of the prices went into operation as soon as they sent the telegram.

A. It is well settled that, as between an agent and his principal, the revocation of an order becomes operative as to the agent, only from the time it is actually made known to him. If it is given by letter or telegram it takes effect from the time the letter or telegram is received by the agent, not from the time it is mailed or left at the office for transmission.

5. We have an agent who carries our line of samples and sells goods for us on a commission basis, against which we allow him a weekly drawing account. He takes an order on an article on which the price on his price-list is 45 cents at 42½ cents; we inform him that we cannot accept the order at that price, and he advises us that he has made a mistake in quoting the price. Are we compelled to deliver these goods?

A. An agent cannot bind his principal in any case unless the contract is in such a form that it would be binding if it had been made by the principal himself; that is, the contract must be in writing if it is one of those which the law requires to be written, and all other necessary formalities must be complied with. This much being promised, the agent can bind his principal in these two cases: First, if he has been expressly authorized to make a sale or other contract which shall be binding upon the principal; secondly, if other agents of the same class in that market, or in that district, generally have express authority to bind their principals, and if the person dealing with this agent does not know that such authority has been withheld from him; in the absence of knowledge to the contrary, the buyer or other person dealing with an agent is justified in supposing that he has the same power and authority possessed by other agents in that line of business thereabout.

6. Two men represent me buying certain products in Tennessee. One of them calls on a person and wishes to buy a certain article from him which he will not sell without selling another article with it which he (the resident) represents he is holding for my other man, who, he said, had instructed him to hold this article and he would take it when he again came through. Believing this to be

the fact, my man, who was then there, agrees to take it, and gives the party a sight draft, which, when presented, I refused to pay, as the seller had misrepresented my other traveling man as to what he had said. The goods remain in depot here. Happening to see them we examined some of them and found them not to be genuine and without commercial value. The constable of a town notifies me today he has levied an attachment on certain goods placed in depot there by another person, consigned to me, to satisfy a note which he says the person holds against me. It is not a note but a sight draft, which has not been honored. Can I proceed against the constable for damages? I have never received notice of a suit or procedure against me.

A. If the sight draft had been drawn by the seller of the goods, it would represent no liability of the drawee, and there would be no ground for the suit. But being drawn by the drawee's own agent, who may have been authorized to issue such drafts, it does represent, if this is true, an obligation of the buyer of the goods. It is very doubtful if the representation under which the agent was induced to make the purchase of both lots can be made out to be such false pretenses as to vitiate the bargain. The only legal defense of the buyer is very likely to be the unmercantile character of the goods. If they were sold as of merchantable quality, and proved not to be, that would be a good defense against paying for them. The best way is to tender payment for all that is due, and if the amount is sufficient to quarrel about, defend the suit for the remainder of the claim.

7. B is purchasing agent for A. A dies in Europe, and before the news arrives B, acting for A, buys a horse from C. Afterwards X is appointed administrator, and C, not being satisfied with his bargain, made originally with B, tenders back the purchase price, which is refused, and demands the horse.

A. The prevailing opinion in the courts of this country is that the death of a principal revokes all authority of his agent to represent him, even though the fact of the death was not known to the agent when the particular contract in question was made.

8. If a commission merchant turns over part of the goods in his hands to another commission merchant, either here or in some other city, who becomes responsible for the solvency of the second commission merchant and for the safety of the goods while they are in his care?

A. If a commission merchant is entrusted with goods to sell, and he, in turn delivers them to another for sale, he makes himself personally liable for the value of the goods unless he had permission of the owner, express or implied, so to deal with them. If his course was that sanctioned by the usage of the particular trade the commission merchant had implied authority to follow it. An owner of goods who delivers them into the possession of a commission merchant for sale does so in reliance upon the good faith and solvency of the latter. It is a trust which cannot be delegated to another. If the commission merchant puts another in his place, wholly or partially, without authority, he makes himself answerable for the conduct of the person so chosen.

9. We were advised by a firm which we represent in the United States that they had consigned us a quantity of goods. Upon arrival of the vessel having the goods on board we called at their bankers here to obtain the papers to make the usual customs entry, and were informed that the papers would only be delivered on payment of $1,106.50, the amount of the goods. We immediately cabled them to arrange with the bankers to deliver us the papers; receiving no reply whatever, the goods have long since then gone under "general order." Can they hold us for the charges so incurred?

A. One who is a mere agent for the sale of goods consigned to him, or for any other purpose, is never under obligation to advance any money of his own to further the interests of his principal unless he has expressly agreed to do so. The essence of an agency is that the principal is to furnish all the money needed for the business, incur all the risks and have all the gains except such definite salary or percentage by way of commissions as he has expressly agreed to allow to the agent for his services.

10. 1. If mercantile agencies are protected in the passing of reports about business men are they not held to a responsibility as to the methods they use and made liable for imperfect service?

2. If a merchant furnishes a mercantile agency with a statement from actual stock account taken and their report vilifies his statement, is not his refusal to subject himself again to such treatment a valid and sound reason?

3. If a merchant does not subscribe and furnish an inducement to rate him properly and the mercantile agency continues its false representations, is it incumbent upon the merchant to take any steps in notifying to hold it in liability?

4. As per the mercantile agency's rules is he not thus legally debarred from getting at its books issued only to its subscribers?

5. If the merchant wished to set up a case or cause of action and its books had falsely represented him for years, would the court take cognizance of those past years if coupled with malicious action of later date.

A. A statute was enacted not long ago making it a misdemeanor for a merchant deliberately to place an exaggerated value on his assets in any report made to such agencies; this enactment, however, is mainly for the benefit of those who may give credit to the house so reporting.

1. A mercantile agency is bound to use good faith and a reasonable degree of care in selecting its agents and in making reports. If it employs, or keeps in its service, a reporter whom it knows to be corrupt or careless it makes itself responsible for his false reports. If it is negligent in making or in supervising its reports it becomes liable for any resulting damage.

2. In such a case as this the agency is justified in reporting simply that the merchant refuses to make a statement; it need not furnish to subscribers the reasons alleged by him for his refusal.

3. If a mercantile agency knowingly or negligently makes a false report concerning any merchant, and he is damaged by it, he may bring suit immediately to recover such damages, without previously notifying the agency that he proposes to take such a step.

4. If the agency's books contain statements of value to a plaintiff in preparing or prosecuting his case he may compel a production and inspection of such books, no matter what rules the agency may have made for the guidance of its agents and customers.

5. The merchant could not recover any damages resulting from a statement made so long before that suit was barred by the statute of limitations. Each publication is a new offense and only those made within the period limited by the statute could be made the basis of a suit for damages.

AGENTS.

1. Suppose the resident buyer of an out of town house buys a few small items and takes the goods with him and gives a receipt for the same in the name of his house, then converts these goods to his own use, is his house responsible for the payment of that purchase?

A. A principal is bound by the act of his agent, if the agent has acted within the ordinary and usual scope of the business he was authorized to transact, and the party dealing with him did not know he was exceeding his authority or betraying the trust reposed in him.

2. I bought of a commission house a quantity of canned fish, a portion of which were sold here, the remainder being sold and shipped abroad. After a reasonable time my foreign correspondent advised me that the entire lot shipped him had discolored, rendering them unmerchantable and worthless, and requesting me to dispose of them. On receiving his complaint I immediately notified the commission merchant (from whom I bought the goods), who replied "that he had no interest in the matter, the goods being consigned to him, and which were sold me by samples which were approved of at the time, and that therefore all his liability had ceased." The seller claims that as soon as he was paid for the goods he remitted the shipper and now refuses to entertain any allowance or refund the amount paid for the fish. Is the commission merchant responsible?

A. It is well settled that when the identity of the principal is not disclosed, all the obligations arising under a contract may be enforced against the agent, even though he may be known to be merely an agent, and to be acting in that ca-

pacity. In the case put by our correspondent, any valid claim which he might have against the principal, arising from the implied warranty that articles sold for human food are sound, wholesome and fit for such use, or any claim founded upon other valid grounds is good against the commission merchant who sold the goods.

3. A engages B to sell goods for him. B is to receive 30 per cent. of the net profits of his sales; there was no time mentioned when the commissions should be paid. Can B demand his share of the profits before the bills are paid?

A. A commission on sales is due when the sale is completed.

4. A, a planter, buys some machinery to be shipped from a foreign port from an agent, B. Before the arrival of the steamer bringing the machinery B delivers to A a bill of lading specifying number of packages of machinery for plantation W. This bill of lading is a copy bearing the seal of the shipper, but not indorsed by him or signed by the captain. B, however, indorses this copy to A, and A not being a merchant, indorses it to a merchant thus: "Deliver to E for Custom House entry." E, the merchant, made the entry, paid the freight and delivered the goods to A. Two months later the consignees of the steamer notify E, the merchant, that a claim has been made on the owners of the steamer in Europe asking for the goods or a certain sum. Now the copy of the bill of lading by which the goods were delivered, is exactly like the original, and made in the same handwriting. A paid to B, with whom he contracted, the value of the machinery, and B disappeared. E, the merchant, paid the consignees of the steamer the freight on the goods. Who is here the responsible party?

A. It is well settled that where authority is given an agent to sell goods, he is to be presumed, in the absence of notice to the contrary, to have authority to receive payment for them; and accordingly such payment by one dealing in good faith with the agent will relieve the purchaser from further liability. When the authority given to an agent is to transact business for the principal in a foreign country it must, in the absence of all counter proofs, be presumed to include the authority to transact the business in the forms, by the instruments, and according to the laws of the place

where it is to be done. When goods are shipped or afloat, the bill of lading represents them, and the indorsement and delivery of it by the owner of the goods or his authorized agent, with intent thereby to transfer the title, has the same effect as the delivery of the goods themselves. By giving to a consignee evidence of title or authority to sell, the owner is stopped from claiming title, as against a *bona fide* purchaser.

5. I was the owner of four very valuable King Charles spaniel dogs, and I took three of them (five months old) to a kennel. The owner of the kennel was struck with their beauty and agreed to take the three dogs on commission to sell them. He was to care for the dogs and feed them until sold. For two of them he agreed to give me thirty dollars apiece, and for the third fifteen dollars when sold, he to keep all over such amounts for his commissions. I told him the dogs would require certain foods, proper housing and a great deal of care. Above all I instructed him never to give them any raw meat. To all of my instructions he acquiesced. About three weeks afterwards I found my dogs eating raw meat, not supplied with the foods I had ordered for them, and kept in filthy quarters. A little later two of them died and the third required very great care from a veterinary to save its life. Have I a case against this man?

A. If any person contracts to care for animals belonging to another he is bound by an implied agreement that he has, and will employ, a reasonable degree of skill in the undertaking. He is also bound to obey all reasonable directions of his principal in the matter. Like any other agent, he is liable for all damage arising from his lack of a reasonable degree of skill, from his failure or refusal to exercise such skill in that particular employment, or from his unjustifiable disregard of the directions issued by his principal.

6. Would an appraisal agreement signed by the executor of an estate, for the assured, and also as agent of the companies interested, be legal, the executor and agent being the same person?

A. No person is ever allowed to act as agent of two parties having adverse or conflicting interests in the same matter unless each party knows that he represents the other and assents to it. In this case, if the responsible officers of the insurance company or if any interested person of the

estate did not know, when the appraisal was made, that their agent in the matter was also agent of the assured, they can successfully oppose and defeat the appraisement as soon as this fact is brought to their attention. When an appraiser is described as "disinterested" that must be taken to mean, not simply that he has no pecuniary interest in the matter, but that he has no duty or predilection which might influence him to favor either party unduly.

7. The superintendent of schools in our town is inclined to place all the school property in mutuals. Is there not a law prohibiting officers and trustees from insuring with any company where there is a chance of assessment?

A. The statutes of Massachusetts seem to be silent on this subject, and we cannot find that the matter has ever come before the courts of that State for decision. If it were to arise it seems probable that the courts there would reach the same conclusion already announced by the highest court of New York State. An agent has all the powers expressly conferred upon him, and he has, besides, all those incidental powers which he must exercise in order to make his express authority effective. If an agent is authorized to insure his principal's property, and if there is no other except a mutual company with which he can place the risk, then he is authorized to insure in a mutual company. But if a policy can be taken out with a stock company insurance in a mutual company is not necessary in order to exercise the right and duty of insuring the property, and the agent is not authorized to insure in a mutual company.

8. What redress have we when we give a bill to a lawyer to collect and he, after collecting it, fails to settle with us after repeated requests?

A. If a lawyer, professional bill collector or any other agent collects money belonging to another, and then refuses to pay it over to the owner, he may, in any case, be compelled by suit to make such payment. If he has purposely

withheld the funds, or misappropriated them, he is guilty of a crime; if he has lost them through some act of negligence he is still liable for the amount civilly, though he incurs no criminal liability in such case.

9. I have just leased my house for three years to a gentleman whose attention was called to the sign on my house by a friend of his (not a real estate man) living opposite me. This man now asks for his commission. Is he entitled to commission?

A. A person is entitled to a commission as agent in either of the two following cases and in no other: (1) When he is employed to do a service for the principal and does it; (2) when he does a service, without previous employment, and the person for whom he has done it accepts the benefit of the service, knowing when he does accept it that it was not gratuitously done and that a charge is to be made for it. The second case arises whenever the person for whom the service was done is distinctly informed that he will be expected to pay for it if he accepts it; and also, in some cases, when the person who has done the service is regularly engaged in performing services of that kind for pay.

ALIENS.

1. Please advise us whether an Italian who came to this country when 15 years and five months of age, and is now 27 years and three months of age, will be safe in going back to Italy for two or three months without being subjected to the risk of having to serve in the army, and what are the regulations and papers which he should take along in going over.

A. In a case of this kind a citizen of Italy may secure from the Italian consul stationed nearest to him a document which will secure his exemption from arrest or prosecution by the Italian Government during a brief visit to that country. When he asks for the document he must present to the consul satisfactory proof of his identity and of the facts stated by our correspondent. The most satisfactory evidence

of all these facts is the Italian passport which he brought with him when he first came to the United States; this alone will suffice. If he has no such passport then he must present to the consul the affidavits of four reputable persons, duly attested before a notary public, to the effect that they are acquainted with the applicant, and that they know the facts to be as here stated. Upon the strength of these four affidavits the consul will issue the necessary permit.

2. In what States of the Union (on the eastern coast) can an alien be most quickly naturalized?

A. The United States alone can make an alien a citizen, and to be naturalized he must live in this country five years, and if he came here after he was 18 years of age, he must declare his intention two years before he can take out his final papers. But some States allow an alien to vote before he becomes a citizen; and upon his declaration of intention and a short residence varying from four months to a year, he may in that State exercise the elective franchise precisely as if he had been naturalized.

APPRAISALS.

1. In the event of a disagreement as to the amount of loss, under the New York standard form of fire insurance policy, and this question is submitted to appraisers, has the company or the assured the right to object to the appointment of any "competent and disinterested" appraiser by the other party?

A. If the insurer and insured have agreed to submit any differences which may arise between them to "competent and disinterested" appraisers, chosen upon the one side and the other, they are bound by this clause of their contract as by any other part of it. The mere fact that a builder chosen as appraiser "has the reputation of making excessive awards" may not be sufficient to justify his rejection, but if he actually does make excessive awards he is either not disinterested or else he is not competent; an objection to him founded upon the ground of his making such awards is valid if the

fact can be established. When either party to the contract rejects an appraiser chosen by the other party he must be ready to show, to the satisfaction of a jury, that the rejection was for justifiable cause. If he fails to establish this fact he is guilty of a breach of the contract.

ARBITRATION.

1. A buys a lot of beans to arrive "about like sample." On arrival of the beans they are found to be about worthless, very moldy, cakes of mold. A refuses to accept them and claims they are unmerchantable, not fit to eat. B, the seller, claims that the matter must be arbitrated, as the contract reads in printed form: "Should any question arise between buyer and seller, this contract not to be void, but shall be arbitrated, etc." A takes the ground that it is not a case for arbitration, as the beans are not merchantable, but are worthless. Will the Health Department allow these beans to be sold if, as I state, they are very moldy, etc.? Will not this offset any arbitration?

A. This case does not require arbitration under the contract. It is agreed that "should any question arise between buyer and seller this contract * * * shall be arbitrated." Obviously the first questions to be determined are these: Has any question arisen between buyer and seller? Has any dispute arisen? So far as we are informed, no such question has arisen and there is no dispute. The buyer says that the goods are unfit for use. If the seller disputes that statement there must be arbitration, under the contract. So far as we are informed, however, the seller does not claim that the goods tendered are merchantable, does not raise any question concerning the buyer's statement. If there is any attempt to sell beans of this description for human food the Board of Health will be in duty bound to interfere.

2. A sale has been made of some goods, without anything being in the contract about arbitration. On delivery a question arises as to quality. The seller, A, had the goods examined on the dock by an expert and has the expert's opinion that the goods are all right. The buyer, B, has the goods examined by a competitor of the seller, who pronounces the goods to be of a different kind than sold.

In case an arbitration is decided upon, are there any established rules which are to be followed in this arbitration?

A. A man who has formed and expressed an opinion on a matter in controversy is not fitted to be an arbitrator in the same matter; an arbitrator ought to be as unprejudiced and as open-minded as a judge or juror. If one who has expressed an opinion is selected as arbitrator, and one of the parties does not know that he has expressed an opinion, that party can have the award against him set aside by showing, after it is given against him, that one of the arbitrators had made up his mind before the arbitration, and that the objecting party was not aware of this fact when the case was submitted. Either party to a controversy may if he choose accept, as one of the judges to determine it, a man who has already expressed an opinion hostile to his claims, and if he does knowingly accept such an arbitrator he cannot afterwards object to his finding. But either party is clearly entitled to refuse such an arbitrator in the first place, and he ought to do so. If a matter is to be submitted to arbitration the first step is to select the arbitrators or to agree upon the manner of their selection. Both parties are perfectly free in this matter. Neither of them is bound to submit the dispute to arbitration at all, and either may attach any terms he chooses, reasonable or unreasonable, to his agreement to arbitrate. If it is intended that the award of the arbitrators shall have the force and effect of a judgment there are certain formalities that must be observed with considerable strictness; they may be found set forth at length in the statutes under the heading "Arbitration and Award."

ASSIGNMENTS.

(See also Insolvency.)

1. A firm assigns without preferences. On account of a disagreement among its creditors, the value of estate decreasing, no settlement was made. Will the law give an honest debtor a release?

A. An insolvent debtor, in most states, may be released

from his indebtedness by making an assignment with the consent of those creditors to whom two-thirds of his indebtedness is due. Application for such discharge must be made by a petition of the insolvent addressed to the County Court of the county in which he resides. The petition must set forth that the petitioner is unable to pay his debts and is willing to assign his property for the benefit of his creditors. To the petition must be annexed an instrument or instruments executed by one or more of his creditors residing in the United States, having debts owing to him or them in good faith which amount to not less than two-thirds of all the debts owing by the petitioner to creditors residing within the United States. Each instrument must be to the effect that the person executing it consents to the discharge of the petitioner from his debts upon his complying with the provisions of the law. The petition must be accompanied by a schedule giving the names and residences of all the creditors; a statement of the sum owing to each, together with the cause and consideration of the debt; a statement of any existing judgments, mortgages or collateral, or other security for the payment of the debt, and a full and true inventory of all the debtor's property, in law or in equity, and the incumbrances upon it. Upon the filing of this petition the court will issue an order summoning the creditors to show cause why such assignment should not be made. If it cannot be shown that the debtor has failed to comply with some of the requirements of the statute, a release will be granted him.

2. A buys merchandise from B and settles for same by notes. A delivers other merchandise to B to be finished at a specified cost and reshipped to A. B orders from A a certain quantity of merchandise such as sent by A for finishing. A delivers the goods, invoices same payable to a banker and assigns the account as collateral for money borrowed thereon. When the invoices are due and the banker demands payment, B returns the invoices to A, and refuses to pay the banker until A pays the notes given B for other merchandise. Can the banker enforce collection from B as per the terms and conditions specified on the invoices?

A. B, while he holds notes signed by A, orders goods from A. A assigns to a banker his claim against B arising out of the purchase of these goods. The question is: Can the banker collect this claim in full, ignoring the notes, or may B refuse to pay for the goods an amount greater than what may be left, if anything, after deducting the face value of the notes from the purchase price of the goods? The principle is this: If the notes were due when the assignment to the banker was made, the holder of the notes, who is also purchaser of the merchandise, may set off the one claim against the other and refuse to pay more than the balance against him, if any. But notes which were not due when the assignment was made to the banker cannot be used to offset any part of the banker's claim under that assignment. So far as the banker is concerned, the equities must stand as they were at the time of the assignment to him; any matured claim that the purchaser then had against the seller he may use as a set-off, notwithstanding the assignment; but he cannot delay payment until notes or other debts mature and then put them forward as a set-off.

3. A woman has been owing me money for some time. She evidently will not pay except by compulsion. Her husband receives monthly wages as a sexton and a janitor. The treasurer who pays the wages says he will pay my debt if I will give him the "proper legal authority." What must I do to satisfy the treasurer?

A. If this is a debt for which the husband is liable under New Jersey law, a debt not incurred by the wife upon her sole responsibility and for her own use, then the husband can be compelled to pay it as if he had incurred it himself. The treasurer who pays wages to the debtor in this case may be willing to take an assignment of the claim, to buy it, either absolutely or conditionally; and if he makes such a purchase he can take the amount out of wages afterwards falling due to the debtor. This plan will at least place upon the debtor the burden of appealing to the courts if he doubts or disputes the assignee's right to collect the debt in this way.

4. Can a man assign a life insurance policy after he has already been adjudicated a bankrupt?

A. The national bankruptcy law, now in force in all the States, contains the following provision as to insurance policies forming part of a bankrupt's assets: "When any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own and carry such policy free from the claims of creditors." If such payment is not made the policy passes to the trustee in bankruptcy as part of the assets; if the payment is made the bankrupt continues to have full legal title to the policy.

5. We made a sale to a firm who became embarrassed and offered a compromise to their creditors. We accepted the settlement offered, 25 per cent. cash and 25 per cent. by note at one year. The note given us was not paid, and after some delay the concern now goes into bankruptcy. Please inform us whether our claim in the bankruptcy proceedings would be the note only or the full amount due under the original sale?

A. The compromise in this case, in so far as it has not been carried out, will probably be set aside and all the bankrupt's estate be held liable to his creditors under the bankruptcy proceedings. It has been held that "an adjudication of bankruptcy at the instance of the bankrupt's creditors on the ground of a general assignment, avoids such assignment and subjects the property assigned to the jurisdiction of the bankruptcy court to be administered under the Bankruptcy Act, which the creditors have invoked."

6. Suppose I purchase 100 shares of stock through a broker at $75 and deposit $50 per share as a margin. The broker fails. Can I pay the assignee the balance due on the stock—$25 per share—and take the certificate, or do I only come in as a creditor to the extent of the margin?

A. An assignee for creditors takes no better title to property in possession of his assignor than the assignor himself had. While stock bought upon a margin is in the hands of a broker the customer is entitled at any time to complete his payments towards the purchase of the stock and take a clear title to it. This right he retains if the broker becomes insolvent and makes an assignment. The assignee simply takes the place of the insolvent for the purpose of making an equitable distribution of the property belonging to the latter; property held by the broker merely as a pledge is held in the same way by the assignee, and the owner of such property may pay his debt and take up the collateral.

7. S makes an assignment to Mr. J for the benefit of his creditors. Mr. J converts the assets into cash, from which he pays each creditor 10 per cent. of the amount of his claim. The creditors, while accepting this dividend, have made no agreement whatever as to a settlement. Can S start up business under his own name without first going into bankruptcy?

A. The assignment made by the debtor in this case is in itself an act of bankruptcy. The Bankruptcy law declares in section 3 that "acts of bankruptcy by a person shall consist of his having * * * made a general assignment for the benefit of his creditors." The only difficulty, in this case, is that there does not appear to be anyone who will be heard to petition that the debtor be formally declared a bankrupt. If he had merely made an assignment, and none of his creditors, or less than all of them, had accepted a dividend under it, the debtor could be forced into involuntary bankruptcy. But if a creditor accepts part of his debtor's property under an assignment, with a tacit understanding that this is to be the end of the matter, the courts will not allow that creditor to force the debtor into bankruptcy.

8. What are the powers and limits of an assignee, I having been appointed by a friend of mine who is one of the creditors?

A. An assignee succeeds to the rights of the assignor and

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takes the property subject to all the equities existing at the time of the assignment. His chief duties are to take possession of the property assigned, convert it into money by selling the property and collecting the debts due to the estate, and to distribute the proceeds among the creditors entitled to them. He is bound to look primarily to the interests of the creditors, and in any case of doubt he may ask their assent, which, if given, will estop them from objecting to the proceeding afterward. He is to act strictly in accordance with the powers conferred upon him by the instrument under which he is acting, but so long as he does so his power and discretion are considerable. If he acts within the powers conferred upon him, and exercises reasonable prudence and skill in dealing with the property, he will not render himself liable to damages. If the business is such that more may be realized by continuing it; if, for example, it is a manufacturing business and large supplies of raw material are on hand, the assignee may carry on the business as long as this state of things continues. With the consent of the creditors he may continue the business under any circumstances.

9. Does a legal and duly recognized insurable interest exist under these circumstances: B & S, wholesale merchants, extend liberal credit and unusual indulgence to Jones & Williams, retail merchants, who make an assignment under our laws, whereby they are released from all further legal liability, in so far as accepting creditors are concerned, upon their paying to such accepting creditors the sum of 33⅓ cents on the dollar of their original indebtedness. B & S accept such assignment, and while the assignment is pending, and before the one-third payment is made them by assignee of J & W, on account of gratitude and past good treatment, Williams, of the firm of retail merchants, voluntarily proposes to B & S that they insure for their benefit his life. B & S have received from the assignee of Jones & Williams 30 cents on the dollar of the sum due them—with every reasonable promise of receiving 3⅓ cents on the dollar addition in the near future. Under such a condition of things are B & S entitled, in the event of the death of Williams, to recover (if the insurance is large enough) an amount equal to their loss under the said assignment?

A. The acceptance of the assignment by B & S was not a payment of the debt, the debt had not been paid when the insurance was effected, and B & S at that time had an insurable interest in the life of Williams. The assignment was not complete, and there was no absolute certainty that it ever would be completed and a release be given by B & S to Jones & Williams. If the insurance is good when it is effected, it remains good, and a payment of the debt which the policy was to secure does not destroy the validity of the policy. The policy in this case would probably be held good, as against the insurance company, for whatever money it was given to secure.

10. Can salary be attached and collected on salary loans?

A. If a company loans money to an individual, the loan being upon fair and equitable, not usurious, terms, the borrower may pledge or assign his salary as security. He has the same right to do this that he would have to pledge any other property or assign any other claim. The assignment being made, not upon compulsion, but willingly as part of a valid and legal contract, can be enforced.

11. What priority, if any, has an acceptance over other debts due by a firm which has made an assignment?

A. An ordinary acceptance has no priority over other obligations due from an insolvent estate, unless preference is given to it by an assignment.

12. If after S & B, doing business in Texas, have made an assignment owing J & Co. $14,000, evidenced, by their two promissory notes for $10,000 and $4,000—the first, or $10,000 note, due, and the $4,000 note, not due—can they (J & Co.) sell the last named note of $4,000, and the purchaser of such notes accept the assignment and J & Co. remain out, refuse to accept on the balance of what S & B were owing them when they assigned, and can J & Co. after this sue S & B and obtain judgment the same as any other creditor who declines to accept under the assignment, or does their disposing of a part of their claim operate to compel them to accept the assignment, or compel the assignee to refuse to pay any part of their claim for the reason they sold a part of the same?

A. There is nothing in either the Texas statutes or decisions to indicate that a creditor who has sold one of his notes is bound to accept the assignment of the debtor, either upon the ground that he has alienated part of his claim or because the purchaser has accepted the assignment. The sale of one of the notes certainly could not be construed as accepting a part of his claim from the debtor or assignee, which is one method of indicating that he accepts the assignment.

13. A business man who has made an assignment for creditors held the lease of an expensive piece of property for a number of years. The assignee removed from the building within a few days after taking charge, and he has since rejected all demands for rent accruing since his removal. Is the assignee not bound since the assignment, as the merchant was before?

A. An assignee for creditors always has an election whether or not to accept a lease of real estate held by his assignor, without affecting his right to other property, and he is not bound by the lease unless he does accept it. He may reject the term and he is then not liable, unless he enters under the lease, or, by some act or failure to act, signifies his intention to accept it. When an assignee enters upon the leased property merely to care for and remove the goods of his assignor, and remains in occupation no longer than is reasonably necessary for this purpose, all the circumstances of the case being considered, he is not liable; his occupancy is not under the lease, but merely as a tenant at sufferance. All the circumstances of each case must be considered in order to determine what is a reasonable time in which to remove the goods.

14. A purchase of real estate was made and title taken in the name of the real estate broker who negotiated the sale, but for the benefit of four purchasers, A, B, C and D, who each signed the following agreement: "We, the undersigned, do hereby agree that we will pay the expense of holding (here followed description of real estate purchased) until such time that it can be sold at a price agreed upon by the majority, and that we will each of us pay in

equal amounts the cost of holding the same and when sold the sum received after paying all costs and expenses shall be equally divided between us." A sale has just been made at a considerable profit and it now appears that subsequent to the signing of above agreement and without consultation or notice to D, A and B for a nominal consideration had assigned their interests to C, who now claims to have a three-quarter interest. Was there an assignable interest created by the agreement, and can C hold three-fourths, as against D's one-fourth?

A. It is a general rule of law, and one that is enforced by the courts of Massachusetts, that co-tenants of all kinds of joint estates, except tenants in entirety, may dispose of their shares in the estate, without the consent or participation of the other tenants. Their deeds will convey whatever interest they may possess, unless bound by an independent contract not to assign. But there is nothing in the contract set forth by our correspondent which can be properly construed as having this effect.

15. A and B are equal partners in a business. A invested $600 and B invested $100. At the end of their copartnership, which was for an equal share of the profits, each decides to stay in business for himself and each takes his customers. B's outstanding with the trade is $250, but as his investment was only $100 by taking the outstanding accounts of his customers he would owe A $150. After deducting discounts and allowing something for deductions of his customers he agrees to give A a note for $50 and his jewelry, which he is to redeem in three days for $70. Now, from the outstandings there were $20 that B could not collect and he calls on A to make good half of the loss, which A declines to do, on the ground that he is not collecting the money for the firm nor for A's account; furthermore, if he was collecting it for A, he should have turned it in as collected. He also claims that the fact that he gave him a flat amount for the claims shows that he took them on his own responsibility. B claims that as they profited equally by the sales they should bear the losses equally between them. Which is right?

A. Whatever the other facts in this case may be, it seems certain that one partner, on the dissolution of the firm, sold to the other his interest in the outstanding accounts, or in part of them, for a certain consideration, including $50 in cash. If this is the fact then the seller had no further interest

in such accounts—no prospect of gain if a larger proportion were paid than they had expected to collect, and no danger of loss if less were collected.

16. A borrows $6,000 from B, giving therefor his note and a Connecticut life insurance policy of a face value of $30,000. With the said policy A turns over to B an assignment executed by all the beneficiaries, his children, but not filed with the company, assigning their interest absolutely. Could B, upon the death of A, collect anything except what he could prove was owing to him under the loan?

A. A debtor may turn over to his creditor a life insurance policy as absolute payment of his debt. In that case the debt is paid precisely as if money had been given to and accepted by the creditor, and the creditor is absolute owner of the policy and is entitled to collect and keep all the proceeds of it. But if a policy is assigned to a creditor merely as collateral for the payment of his debt the creditor has only the same interest in it he would have in any other collateral; that is, he may collect from the proceeds of the policy the amount of his debt and advances with interest, and no more.

17. Is a manufacturer who uses receptacles for the delivery of his goods, which receptacles are charged for separately from the goods and returnable to the manufacturer at the price charged by him, obliged to receive same when return is offered to him by other than the original buyer? The receptacles have the name of the manufacturer stamped thereon.

A. The general rule of law is that any right which a person may have is transferable to another person. This is necessary in order to preserve that absolute freedom of contract and right to deal as one will with his own property which the Anglo-Saxon law likes to confer upon those within its jurisdiction. If the legal right has been assigned, in such a case as our correspondent describes, and there is no statute or clause in the contract to prevent an assignment, the assignee has simply to tender the receptacles and demand the sum named in the agreement; if payment is refused he has

no remedy but to sue as the assignee of the original party to the contract, and he is entitled to prevail in such a suit.

ASSOCIATIONS.

1. Is it necessary to incorporate an association that is created to aid in the election of candidates of a political party, also to watch and aid legislation favorable to them, they engaging in no other kind of business, and having no permanent headquarters?

A. Such an association as our correspondent describes may have itself incorporated or not, as the members may elect. The law offers certain advantages to the regularly incorporated associations (the chief of these being, perhaps, the fact that members and officers are released from the danger of being held individually liable for the debts of the body), and then leaves it to each society or association to accept these advantages or ignore them at its will.

2. A voluntary society, not incorporated, wishes to distribute its assets among its members and dissolve. How shall it go about doing so?

A. If a society is not legally incorporated under any statute of the State it need take no legal steps in order to work a dissolution. All that is necessary in that case is to be sure that all debts are paid, notify all who have given credit to the society that it is dissolved and that no one has any further authority to bind it by contract, and then divide the assets equitably among the members.

ATTACHMENTS.

1. 1. If we have a judgment in one county of Pennsylvania and wish to attach property of the debtor in another county what is the process?

2. Can the income from a trust estate in Pennsylvania be attached, and it so, can the attachment be placed in the hands of the trustee to lie there until sufficient income has accumulated to satisfy the judgment?

A. If judgment has been secured in one Pennsylvania

county property in another county may be attached. The process of suing out the second or other subsequent writ does not seem to differ materially from that to be followed with reference to the first writ.

2. One who places property in trust for another in Pennsylvania may provide in the trust instrument that no part of the income shall be liable for debts of the beneficiary, and this provision will be respected. If there is no such stipulation in the trust deed the income may be attached. An attachment will bind all interest and income that comes into possession of the trustee until the attachment is dissolved or the matter is disposed of in some other way through the courts.

2. We understand that by the laws of the United States goods in bond cannot be attached in an action of law by trustee process or otherwise. If, notwithstanding this law, any court grants a prayer for the issue of an injunction against the manager of a bonded warehouse not to deliver goods rightly owned and deposited in the warehouse, what reason has the warehouse manager to present why such issuance should not be granted temporarily; and if granted temporarily, why it should not become final?

A. When goods are attached for debt the attachment is made, of course, by a public officer and the goods are taken into the custody of the law. It is a doctrine of the courts, accordingly, that goods already in the custody of the law for any purpose shall not be subject to attachment. This rule serves, among other things, to prevent unseemly strife among officers engaged in carrying out the same body of laws. If goods are now in the custody of public officers, for any purpose, it is not to be supposed that there will be any advantage in turning them over to the custody of another officer of the law for some other purpose. It follows, and the courts have held, that goods in a bonded warehouse, which the Government is holding to secure payment of import duties due to it upon the goods, cannot be taken under attachment.

3. If an attachment is made in Philadelphia, and the goods

attached are perishable, how long must they be held before judgment can be taken and sheriff's sale take place?

A. When perishable goods have been attached, under Pennsylvania law, the court is authorized to order their immediate sale, without awaiting the usual formalities. The law provides that "before making sale of any of the real or personal estate of the defendant as aforesaid, it shall be the duty of the trustees to give at least 10 days' notice thereof, in the manner practiced by sheriffs upon executions, and provided also, that the said trustees may, at any time after their appointment, make sale of any perishable goods, upon leave of the court, or a judge."

4. I hold a promissory note for $200, which is one year overdue, and was made to cover money loaned, without interest, and which the maker refuses to pay. Is there any way of attaching his salary?

A. A sheriff's execution against the property of a defendant cannot be taken out, before a judgment has been secured, in such a case as our correspondent puts. Such attachments are allowed only where the action is for breach of contract, wrongful conversion of property or a negligent injury to a person or his property, and where the defendant is a non-resident or is about to remove his property from the State for the purpose of hindering, delaying or defrauding his creditors.

5. A hired a residence for a term beginning in December and on or about February pays his monthly instalment of rent, stating he is leaving the State and will give up the house; his lease holds him until the following December, but he will not owe rent for the month until after he has left the house and moved out of the jurisdiction of the State.

A. There is no method known to us by which, ordinarily, a tenant or other debtor can be compelled to pay money before it is due, or can be prevented from leaving the State upon the ground that some time in the future he will owe a debt due in the State; the presumption is that he will return in time to pay his debt, or will send money to another with which to pay it for him. When a debt has been

fraudulently contracted, or when there has been fraud in any part of the transaction, the courts will sometimes declare the whole debt due before the time named in the contract for the payment of some of the instalments, and then an attachment may be had. This is hardly an exception to the rule, because, by one process or another, the whole debt is found to be due before the attachment is allowed to issue.

ATTORNEY AND CLIENT.

1. Can a lawyer, who draws a Will, legally act as executor of the same?

A. There is nothing in the statutes of most States to prevent a lawyer who has drawn a will from acting as executor under it.

2. Please decide for me whether the cost of an action, where judgment is given the plaintiff, belongs to the lawyer or client bringing the suit.

A. The courts hold that the costs in a suit belong to the attorney and that he has a lien upon the judgment recovered by him for any sum agreed upon between him and his client as a compensation for his services, as well as for the costs in the judgment, and, to the amount of such lien, is to be deemed an equitable claimant.

AUCTIONS.

1. Where property is advertised to be sold by public action without any reservation whatever, expressed or implied, the sale opened, bids made and accepted, can the auctioneer or owner legally withdraw it if the highest bidder insists that he is entitled to the property on complying with the terms of sale?

A. A sale by auction is like any other in this respect, that a bid made and accepted is binding, unless the seller can show a good and valid reason for refusing to be bound. If the bidder were an infant, or for any other reason incapable of entering into a valid contract, such a fact would release the seller, but the burden is upon him to establish the act. That the highest bid was not so high as the seller would like does not excuse a failure to sell, unless the seller has

offered the property subject to a reserved price, or unless he has expressly reserved the right to bid, and does bid.

2. At a public auction of dry goods, the announcement was made before the sale that the entire line of goods was to be sold without claims except for short measure. Would a buyer coming to the sale after the announcement was made, be justified in taking the position that he bought his goods as represented by the catalogue?

A. The printed terms and conditions of an auction sale cannot be varied by any verbal announcement which will be binding upon a bidder unless it can be shown that the latter knew of the alteration before bidding. If there was anything in the catalogue amounting to a warranty, this could be insisted upon by any bidder who had not been informed that the warranty was withdrawn. Otherwise the burden was upon him to learn whether the goods were warranted, or sold as they were.

3. What is the law governing the sales of fruits at auction?

A. The law governing auction sales in Pennsylvania makes it a misdemeanor punishable by a heavy fine for any auctioneer or any one in his behalf to bid at a sale held by him, but there is no provision which would prevent the owner of the goods or the consignor from bidding.

4. "The fruit to be delivered in the usual way to the purchasers, at their places of business in this city, upon payment by them of the regular cartage for same." Are we bound by above terms when the auctioneers allow a portion of the buyers to send their own teams for the fruit they purchase?

A. Those who buy fruit on the terms stated are bound to accept delivery by the carts of the auctioneers and to pay the customary charges for the cartage. But the auctioneers are reasonable merchants, and any customer who can show good reason therefor can doubtless obtain permission to cart his goods with his own team.

BAILMENTS.

1. In the flat in which I live I have a written lease in which nothing is said about storage in the basement of flat of any articles,

but it is the custom of the owner to allow tenants to put odd pieces of furniture and trunks there. A tenant moving out, finds some of his things so stored, missing. Can he hold the owner or landlord for the missing articles?

A. The lessee of a flat is ordinarily not entitled to the use of any portion of the basement, unless he stipulates for it in the lease. The only exception to this rule would arise in a case in which the tenant could show either that the basement was always considered an appurtenant to the flat, or was actually and directly necessary to its full enjoyment. If the basement was not a part of the demised premises, in the case put by our correspondent, the landlord was a mere gratuitous bailee of the property stored there, and was not liable for any loss not arising from his gross negligence.

2. Suppose that goods were sent to a storage warehouse by a truckman who holds memorandum receipt, original and duplicate, and leaves goods and duplicate memorandum receipt, returning with original unsigned; is the latter of any legal value?

A. The unsigned receipt of itself has no legal value. But as corroborative evidence of the fact that the goods described therein were left by the truckman, it may be of some use.

3. My wife holds a receipt for a sum of money from her sister in which it is stated that she has the use of it for a period of three years, paying 5 per cent. interest. It is verbally understood that the money is employed in real estate, but my wife has no mortgage on the property. What security has she,—can any part be demanded if needed?

A. No part of the money can be demanded or payment of it be legally enforced until the end of the three years for which it was lent. If there was an absolute promise to give real estate security, that may be insisted upon, but an "understanding" is not the equivalent of an agreement.

4. A buys wool on commission for manufacturers. C comes to sell wool, bringing it with him; but the wool not being clean was not worth the highest price. C would not take anything less, and A offered to buy only at the price for dirty wool. No sale was made. C, hoping to receive a higher price, left the wool. There being no

agreement A told his men to store C's wool in a place by itself, as he had not bought it. In the same year fire destroyed A's building, burning most of its contents, including C's wool. A little later A died. Are his executors obliged to pay C's claim for the wool at the price A refused to buy it at when he was living?

A. The executors of A are not bound to pay any claim which would not have been good against A himself. If the facts here set forth can be proven they will show A to have been what is known as a gratuitous bailee of C's wool, and as such he is liable for its loss, if it occurred through his gross negligence, or his failure to take ordinary care of the goods; but in any other case he is not liable. In order to hold A liable it will be necessary to prove either that the fire arose as a result of his gross negligence, or that he was grossly negligent in not removing C's goods after the fire began.

5. Is a storage warehouse firm that undertook to move the entire contents of an apartment from one place of residence to another liable for the full value of articles lost?

A. A firm which undertakes to remove the goods of another firm or individual is bound to use reasonable care in doing so. For any loss occurring as a result of its negligence the firm is liable. It is bound to explain the manner in which any given loss happened and to show, if it would escape liability, that the loss was not attributable to its negligence. An unexplained loss is presumed to be one for which the custodian is liable, and he himself must furnish the evidence to rebut the presumption.

6. A is a fur merchant, B is a fur skin dresser. A gives to B a lot of raw skins, valued at $1,000, to be dressed. While in B's care these goods are stolen. Can A hold B responsible?

A. The fur dresser was bound, in this case, to take such care of the goods entrusted to him as a reasonably prudent man takes of his own goods of like kind and value in a similar case. He was not bound absolutely to see that they were not stolen. If he took such precautions against theft as we have described, and the furs were stolen in spite of such

care, he is not liable. If the theft was made possible only by lack of this degree of care the fur dresser is liable.

7. A person engaging storage on cotton, flour or merchandise, is told so much per bale or barrel per month, and the goods are put in the day after the interview on the third or middle of the month.

A. In commercial instruments and contracts the general rule in this country is that, in the absence of agreement the word "month" means a calendar and not a lunar month. It runs from a given date in one month to the same date in the month following. It has been held that as soon as the goods arrive and are taken in charge by the warehouseman his liability, and accordingly his right to compensation, begins.

8. A hires a horse and wagon of a liveryman. While he is driving the wagon is very badly injured in a collision. Is A bound to make the damage good?

A. If A hires a horse and wagon from a livery stable he is bound simply to the usual degree of care to which other bailees are bound, that is, it becomes his duty to take such care of the articles as a man of ordinary prudence usually takes of his own property of the same kind and of like value.

9. A, a common carrier, delivers to B, a case of goods which B accepts, presuming it to be returned goods such as B frequently receives. The case is placed with other unopened cases belonging to B awaiting to be opened in due time as are his other goods. In the course of about twelve days it is opened and it is discovered not to belong to B. The goods had been stolen, as was discovered later when A made claim for their return. On whom does the loss fall?

A. In a case of this kind B becomes a mere gratuitous bailee of the goods. It is his duty to take care of them, but it is wholly for the benefit of another person that he is protecting them. Accordingly, the law holds him to a less strict degree of accountability than that to which it would hold a warehouseman. A gratuitous bailee is held to only a slight degree of care.

10. I sent to a dyeing establishment three suits of clothes to be

scoured and pressed, taking no receipt for them, with the usual responsible clause on it. This establishment was burned and my clothes lost. What redress have I?

A. An establishment which takes clothing or any personal property to repair for the owner is not an absolute insurer of the safety of the property while under its control. For any loss or damage caused by its own negligence the repairing establishment is liable, but for nothing beyond this. The rule is, of course, different if the custodian of the goods expressly agrees to be liable for their safety; it is also different if such custodian has tacitly assumed this liability.

11. I hired a horse from a livery stable, and after I had it out a while I noticed the horse to have a kind of a limp. I did not give the horse any hard driving and I am positive that I did not lame him. Can the owner compel me to pay anything for the horse?

A. When a horse or any other property is delivered to a bailee in good condition, and is returned in a damaged state, the law presumes that the hirer or bailee has been negligent, and he is liable for the damage unless he can rebut the presumption. The owner of the property must first show that it was in good condition when delivered to the bailee and that it was damaged when returned to him. Then the bailee may show by affirmative evidence, if he can, that no act done or permitted by him could have resulted in such damage.

12. I made a verbal agreement with the keeper of a boathouse that the boat should be left in his charge, and I also had the use of a locker in his house, for all of which I was to pay a certain price per month. I find that somebody has stolen the rudder and the mast. Is not the boatkeeper responsible?

A. The keeper of the boathouse in this case was what is technically known as a bailee for hire. His duty was to take such care of the boat as prudent, careful owners take of like property, and for any damage which results from the lack of such care he is responsible.

13. We had consigned to us 100 packages of merchandise, per steamship from Bordeaux. When we sent for the goods but eight

packages could be found. The remainder were broken, literally. They put the goods into bags and tendered them to us. Some of the goods had become unmerchantable by being crushed. Were we bound to accept them as a good delivery?

A. Where goods have been badly damaged by the negligence of the carrier the consignee has an election either to refuse to receive them and hold the carrier for their full value, or to receive them and hold him for the difference in value caused by their bad condition. A carrier's duty is not only to transport the goods, but to deliver them or offer to deliver them to the consignee.

14. When an owner of merchandise gives an honorary order on his warehouse to a buyer, can the original owner subsequently give other orders in regard to the delivery of the same merchandise, which the warehouse is bound to respect?

A. A warehouseman is bound to deliver the goods placed in his charge either to the bailor or to some one authorized by him to receive them, but he cannot be bound to both at the same time. Accordingly a bailor who has given some one else an order for his goods cannot afterward demand that they be delivered to him unless he is willing to furnish to the bailee a sufficient indemnity against loss.

BANKS AND BANKING.

1. A note due to-day is presented at the bank for payment at 11 o'clock A. M. The note is protested for non-payment. Can the holder of such note collect the protest if the maker of such note can prove that he had the money at the bank at 3 o'clock P. M.?

A. We suppose, although it is not stated, that the note is payable at a given bank. The maker, by that promise, is bound to have the money at the place appointed at all times within banking hours, so that if the note is presented five minutes after the bank is opened in the morning, and payment is refused, the promise is broken, the paper is dishonored, and it may be protested without presenting it again. But if the maker can find the holder at any time during the day and tender him the money, he can save himself from any costs.

2. Our bank notifies us that they have lost a check on another point deposited by us. They have asked us for a duplicate, which we are unable to furnish, because it appears that some one of our customers passed us several checks on a given date for credit of his account, indorsed by himself. Our bank generally charges us for collecting checks. Some few items are taken without charge. We hold they are liable, because they are paid for this service.

A. It is no justification of the bank, in a case of this kind, that it receives no fee directly for making collections. It undertakes to make the collection and in some form it receives what it must consider a sufficient consideration. It has, at least, an opportunity to retain the money collected for a longer or shorter time, and this, as the courts have held, is a sufficient consideration. The bank, accordingly, is liable for any loss arising out of its negligence; the bank is not liable unless it was negligent and its negligence caused the loss.

3. We forwarded to our banker a draft payable at thirty days' sight, which draft was put into our hands by an indorsee for collection. After the lapse of a few days we received a statement from the bank that the amount of the draft had been placed to our credit less the collection charges, whereupon we paid the amount to the person from whom we obtained the draft. Later on the draft was returned to us unpaid. Is the bank liable?

A. The notice that the bank to which was intrusted the collection of the draft had placed the net proceeds to the credit of the depositor in anticipation of the due date, was not equivalent to a statement that the draft had been presented and accepted, and does not therefore render the bank liable. If the depositor has suffered any loss from the fact that the draft was not protested, or if there was any unwarrantable delay in presenting the instrument and reporting upon the issue, the bank is liable for such negligence.

4. A deposits check on Chicago bank; we send it to our corresponding bank at Albany instead of direct to Chicago bank, which would have received and collected it one day before failure of the drawer. In losing this day would we be liable for the loss?

A. When a bank undertakes to collect a check payable in another town it is bound only to use due diligence in doing

so. It is not bound, in the absence of special instructions, to send the check directly to the place in which it is payable, but may send it through its usual channel of correspondence.

5. Bank A discounts a note for a dealer for $500, and sends it to their correspondent Bank B for collection. Bank B sends it to their correspondent Bank C in a western State. Bank C sends the note by mail to their correspondent where note is made payable. Subsequently it appears the note went astray, was not presented for payment, was not protested, and indorsers were not notified. Who's loss?

A. The person or corporation through whose negligence the note went astray will be finally responsible for its loss. But Bank A should look immediately to Bank B, leaving the latter to seek redress from the person in fault, or to make him a defendant in the original suit by interpleader. An agent for the collection of money is held to at least as strict accountability as other agents, and all are liable for loss caused by their negligence. There have been many cases where the court has held that an agent, receiving for collection a note payable on a particular day, is held to strict vigilance in making presentment, and if chargeable with negligence is subject to the payment of all damages sustained by the owner.

6. A deposits check on bank in Texas indorsed by B to credit of his account, January 1. The check is mislaid and the error not discovered until December, when the check is forwarded for collection and returned unpaid. Who is liable for the error?

A. The indorser is discharged, and if the check would have been paid had it been duly forwarded, the negligent bank is liable for whatever final loss comes from such neglect. The drawer can be held if the drawee bank continues solvent. But if that bank has failed holding the money to meet the check, the drawer is discharged from all liability.

7. Can a depositor of a bank order charged to his account certain checks of his that have been issued and not yet presented to the bank, and have the amounts placed to the credit of the payee of the checks of which he gives the bank a list? After the bank accedes to the request and has charged the amounts to the drawer's account and

placed the same to credit of the several payees, can the sheriff levy on the same as belonging to the original depositor?

A. A depositor may give such an order, but the bank that executes it takes a most extraordinary risk.

8. On June 15, about 2 P. M., I deposited with a bank and received credit therefor a check on a bank in Massachusetts. On the following day (16th), my bank sent the check to its correspondent, who in turn forwarded it to Massachusetts, where it was not presented until the 19th, and was then protested, the drawer having failed and assigned on the 18th. Have I not a case against my bank for lack of due diligence in holding check back one day?

A. We do not find any facts in the case stated by our correspondent upon which the bank could be held liable. A bank taking paper for collection is bound only for reasonable diligence, and it has often been held that a check presented or forwarded on the day following its receipt by the bank is presented or forwarded with reasonable diligence.

9. A firm draws upon a merchant, making draft, on its face, payable at our office. It is sent to a Dallas bank for acceptance, which stamps it "payable at the First National Bank of Dallas," and drawee accepts without noticing said stamp. When it falls due it is protested at Dallas for non-payment. Was the stamping proper?

A. The qualified acceptance was not a good acceptance of the bill. No collecting agent has the right in presenting a draft for acceptance to take anything but an agreement to meet the draft according to its terms. If the drawee will not give that, but insists on interpolating other conditions, the draft should be protested for want of due acceptance.

10. C & S issue their check on New York bank to their agent G, in a near-by town, who indorses to W, who indorses to B, who indorses and mails to S in an adjoining State. S claims never to have received the check and asks for a duplicate. C & S receive written notification from New York bank that payment of original will be stopped. Should C & S issue duplicate to S, or should it be issued to G and severally indorsed to S as in first instance?

A. C & S cannot be called on to issue a duplicate without a bond of indemnity with sufficient surety to protect them against all liability for the lost check in case it should turn up in the hands of an innocent holder. It belongs to G to ask for the duplicate and to furnish the bond. He

may exact from the next a like protection, and so on down to the last indorser.

11. A had an account with a national bank. In a lawsuit an effort was made to prove that the property of A was community property and a disinterested national bank having an account with A exposed A's account in court. Was it right for the national bank thus to expose A's account?

A. A bank is like any other person, natural or artificial, in that it is likely to be called upon as a witness and to be compelled to testify, if it has any facts in its possession tending to establish the rights in a controversy before the courts. A litigant is in position to call upon any person or corporation able to give testimony which will establish his rights.

12. 1. Is there a law or ruling of the Bank Department that prohibits the officers of a trust company from making loans and taking their own stock as collateral security for the same?

2. If there is no such legal prohibition is it in your opinion wise or good business judgment for a trust company to make loans on such security?

A. 1. Trust companies are not forbidden to make loans upon the security of their own stock, but no loan must be made to an officer of the company upon any security. The general banking law provides that if any shares of its own stock are pledged to any monied corporation, and the debt which they secure is not paid when due, the shares must be sold within sixty days.

2. The chief objection raised against the making of loans by banks upon the security of their own stock is that it amounts to a reduction of the capital, that it is equivalent to selling a share partly upon credit. Such a practice would be liable to abuse.

13. If a collection agent should allow a bank to cancel its certification, made in error, on a note the day the paper became due and return same duly protested, would the agent be in any way liable?

A. He would not be liable if he had not put the matter beyond his own control; and moreover, the agent, if notified in time, would be bound to allow cancellation of the certification if the latter was made by mistake.

14. A forged note is presented and paid; the depositor soon after receives his book and vouchers. A year elapses and he comes to the bank and announces his discovery. Can he recover from the bank?

A. There have been some minor decisions endeavoring to apply a limit of time after payment within which the owner of the account must demand restitution. But these were all swept away by the decisions which established the principle "that the demand for restitution may be made within a reasonable time *after the forgery is discovered.*"

15. If an account is deposited in bank to the credit of Sarah Roe or John Doe is the amount or any part of it part of the estate of Sarah Roe after her death, John Doe surviving?

A. If John Doe and Sarah Roe are man and wife a deposit in their joint names, such as that here described, goes, upon the death of either, entirely to the survivor. This is not the rule, however, in any case in which the joint depositors are not man and wife.

16. A customer of a national bank, in response to a notice that his account is overdrawn $66.77, sends to the bank his note for $100 for deposit, which reaches the bank after business hours on Saturday. The bank gives him credit for the note the following Monday morning, and Monday afternoon the bank hears that the customer died on Sunday, the day before. This credit of the $100 of course gives him a balance of $33.23, which stands undisturbed until the note matures. After the note matures and becomes past due, has the bank a right to indorse this balance of $33.23 on the note, the estate being insolvent, or must it be paid over to the executor, and the bank come in with other creditors for the whole amount of the note?

A. It has been decided that if a depositor in a bank becomes insolvent, owing the institution upon obligations which have not matured, equity will allow the funds to be held and the debt to the bank not yet due to be pleaded as an offset for the balance standing to the customer's credit. But when a depositor dies, the representative of his estate, unless it is insolvent, can claim the balance on deposit, and the bank is not allowed to retain it to discharge his liability on notes not due until after his death. When, however, a depositor is indebted to the bank by bill, note or

other matured indebtedness, the bank always has a right to apply his deposit to the payment of his obligation.

17. What are the benefits that a bank chartered under the laws of the State may gain by entering the national banking system?

A. Apparently there is in general not much choice between the advantages offered by the national banking law and those to be had under the laws of the State. The privilege of issuing notes, which is to be had under the national but not under the State law, may be the determining factor in some cases. In other respects the differences are not marked, and the question as to which law is to be availed of is generally determined by personal or local considerations. The laws of the State provide for the security of depositors in State banks very much as the national law, which is modeled to a large extent on the State law, provides for the safety of depositors in national banks. State banks are subject to the constant supervision of the Banking Department, and are required to make frequent reports to the Department. They are restricted as to the amount of loans to be made to one person and as to loans to their own officers. They are not allowed to accept their own shares as security for a loan.

18. A, who is indebted to B, gives him his check. Before B has time to present the check A goes to the bank and instructs the officers not to pay the amount. Is bank obliged to obey instructions?

A. When the drawer of a check revokes it before it has been certified the bank not only may but it must refuse to honor the check. The whole duty of the bank is towards its depositor. It is bound to obey the last instructions given by him. It is not bound to ascertain the equities existing between its depositor and any person to whom he may have given a check. All such matters are to be settled between the drawer of the check and the holder.

19. 1. If I discount my personal note of $5,000 in my bank and the bank fails before the note matures, and at the time of the bank's failure I have a balance of $3,000, can I deduct this amount from the value of my note?

2. Has the bank a right to discount that paper themselves?

A. 1. If a depositor in a bank is also indebted to the bank upon another account, as for money borrowed, he is not bound to pay his debt to the bank from other money than that which he has on deposit. When his debt to the bank falls due it is sufficient for him to direct the bank to satisfy its claim from the deposit; if the debt due the bank is larger than the deposit only the difference need be paid from other sources. If the bank sues for the amount due to it the defendant may use his deposit as a set-off for the whole debt or for so much of it as can be so satisfied.

2. A bank is allowed to discount paper, and whether the note in our correspondent's case was discounted by the bank in the first instance, or was discounted by the bank only after it had previously been discounted by an individual or another bank, the rule as to set-offs is as we have stated it above.

20. X, a bank, discounts a note for Y, a company located in another State, and gives for the proceeds its cashier's check drawn upon itself, payable to the order of Y. Y, having indorsed the check, deposits it in bank Z, located in the other State above referred to, receiving credit on its account, and the check therefore becomes the property of Z. The check is then forwarded by bank Z to one of its correspondents, and in due course is presented for payment to X, the bank that issued it. Y has meantime become embarrassed and passed into the hands of a receiver, and bank X having learned of this refuses to honor the check, which is thereupon protested for non-payment and returned to the bank Z.

A. There appears to us to be no doubt that the holder of this check is entitled to enforce it against the bank whose cashier issued it. The present holder, the bank Z, is a *bona fide* holder for value, without notice, and it is not bound by any equities existing between Y and the bank X. An interesting decision upon facts very much like those stated by our correspondent may be found in 150 U. S., 231. The decision was adverse to the plaintiff in that case, but the plaintiff, a bank, was clearly not a *bona fide* holder there, and it had notice of a peculiar state of facts under which the check was issued. The court based its decision

upon these two facts, and intimated very strongly that the plaintiff would have been entitled to win except for these facts, which do not exist in the case put by our correspondent.

21. If a draft is drawn upon a customer, payable to a bank, and the same is paid, and the bank should fail in the meantime, do we come under the heading of creditors or receive our money in full?

A. In the way in which such collections are usually made, the money or credit at some other bank, when received, is simply credited to the owner of the draft, and becomes a debt due to him. If the debtor fails before he is paid he stands in a line with other creditors. In England it has been held that if a bank fails with the money in hand the depositor can recover that identical money without reference to the solvency of the institution. It is possible that it would be so held in this country if the payment was held by the collecting bank intact, and its identity could be established; but in the usual course the bank is only held as a debtor of the deposit.

22. When a depositor in a national bank becomes insolvent and is owing the bank on unmatured paper, can the bank hold any balance that the depositor may then have to his credit and offset against it such paper?

A. The courts have decided that if a depositor in a bank becomes insolvent, owing the institution upon obligations which have not matured, the funds may be held and the debt to the bank not yet due be pleaded as an offset to a demand for the balance standing to the customer's credit. But when the depositor dies the case is different. In this case there was no assignment by the insolvent, and the Court fully sustained the position that a bank could set off its balance against a note owing to it by the insolvent and not yet due.

23. We had a promissory note due on the 6th inst. and payable at a bank here. Owing to an error on the part of the maker as to the due date, his account in the bank on the due date was not sufficient to meet the note and it was returned N. G. The maker of the note was out of town, and we ascertained from him about his mistake as to the due date and were also advised by him by letter

that the bank account was made good and again to present the note when it would be paid; but bank refused. Was that right?

A. The maker of the note should have sent instructions directly to the bank, or what is better, have drawn his check on the bank when he made his account good and sent that to the holder of the note. It is not safe for a bank to pay a past due note without special instructions to that effect, for reasons we have heretofore stated in full.

24. A gives to B a check on a national bank to-day, which B deposits in his own bank and which reaches the bank on which it is drawn through the Clearing House to-morrow morning at 11 o'clock. To-morrow morning A gives C another check on same bank, which C presents to the teller for payment, before the teller is aware of the existence of the check through the Clearing House. A having not sufficient deposit to pay both checks, has not the check first presented a claim on the funds to credit of A?

A. "First come first served" is the legal rule, and a bank that discriminates in favor of a second is liable to the first. But where a number of checks are all presented at once, as in a lot coming from a clearing-house together, and there is not enough to the drawer's credit to pay them all, the bank is not bound to pay any of them, but may leave the case to be settled between the holders and the drawer. The holder of a check, so far as the bank is concerned, has no right to interfere. There is no privity of contract between them. The bank has not undertaken or promised to do anything for B, the holder of A's check. It is holding the money subject to A's order. After A has given his check to B, he may stop its payment at the bank. B has his remedy against A, but has no remedy against the bank. The latter is bound to obey A's directions, and leave A and B to settle the matter between them.

25. A promissory note of A, indorsed by B, is about to mature at the X bank where it has been deposited by C, the owner, for collection. The signature of A having a very close resemblance to that of another customer of the bank, the note clerk of the latter institution made the mistake of sending the customary notice of maturity to Y who, being absent from the city, had left his business affairs in the hands of a confidential man, who paid the note when due. On the

return of Y the error was discovered. The indorser B having been released and the drawer A being insolvent, upon whom should the loss fall?

A. There need be no mystery about that matter. Y, whose clerk paid the note by mistake, can recover the money; and whatever loss accrues from the want of presentation to A, and protest if unpaid, falls upon the bank for want of due diligence.

26. There are some banks which will not receive stamped indorsements on checks. Can you refer me to such a decision?

A. Daniel on Neg. Ins., vol. 1, page 58, says: "It is not at all material whether the writing is in pencil or ink, though as a matter of permanence and security ink is of course preferable. And the name may be printed as well as written, though in such cases it cannot prove itself and must be shown to have been adopted and used by the party as his signature." Story on Bills, 58; Schneider v. Norris, 2 Maule & S., 286; Brown v. Butchers' Bk., 6 Hill, 443; Pennington v. Baehr, Cent. L. J., vol. 2, No. 6, February 5, 1875. The actual use of the stamp by the indorser on this particular note need not be proved if it can be shown that it was the stamp he was accustomed to use for this purpose.

27. In case of a man's death has the bank the right to refuse payment of his check after being duly notified of his death?

A. A bank pays a check at its own risk after it learns in any way of the death of the drawer. The executor or administrator of the estate can force the bank to pay over the balance without charging such checks in the account, and the bank must then come in with other creditors for the money thus disbursed.

28. Can a depositor in a savings bank legally make an arrangement with the bank authorizing some person to draw his deposit after the death of the depositor?

A. It is very common for two people (as husband and wife for example) to make a deposit in a savings bank with power for either to draw the money. Thus John Jones

makes a deposit to his own credit, but has written in the book "Sarah Jones may draw." There is no difficulty, therefore, in arranging that another person may draw the money, and if the depositor keeps the book carefully that other person cannot draw until he is sick or dead and thereby surrenders its custody to the alternate.

29. A & Co. draw on firm B, C & D. The latter dissolve before presentation of draft, but C & D, who succeed the second named firm, accept in their own firm name, C & D. The draft was made "No protest." Was the claim impaired by improper acceptance?

A. The claim of A & Co. against B is not impaired by the acceptance of the draft by the successors of the original firm. If this draft is not paid B is liable for the original debt.

If the draft had not been marked "no protest" the collecting bank would be liable for whatever damages might arise from its taking an improper acceptance.

30. A draws a check on his bank to the order of B, his creditor. B receives the check back from the bank with the remark "no funds." A knowing that there were enough funds has his book balanced and finds amongst the vouchers returned by the bank one check drawn by another customer of the bank, but through the mistake of the bank charged to A's account. Has A an action against the bank?

A. If a bank refuses to pay a depositor's check when it has sufficient money belonging to him to meet the check, it is guilty both of a breach of contract and of a tort. The depositor may sue upon either ground. If he has suffered any actual money damage he can recover that amount. If he cannot show any pecuniary loss caused by the default of the bank he is still entitled to a verdict with nominal damages.

31. We made a deposit which contained amongst others several checks drawn to our order upon an out-of-town bank, which had been closed on that day. Our bank refused to accept these latter checks for deposit, although we promised that they should not be drawn against. We have since learned that if the checks in question had been deposited on the day when we offered them for deposit they would have been honored by the Clearing House bank acting as clearing agent for the bank upon which the checks were drawn.

A. We do not know of any statute or rule of law under which a bank is bound to continue making collections for a former customer, or under which it is bound to attempt the collection of every item the customer may offer for that purpose. There is no continuing contract between them, but each transaction is made under a separate agreement, and the bank may enter into the agreement or not, as it chooses, or it may undertake collection of part of the items and decline to handle any other part. The reasons of the bank are of no importance. It need not give any reason, and if it gives any it need not be a reason which appeals to any other person as a sound one.

32. A national bank with a capital of $1,000,000 could legally loan but 10 per cent of its capital stock to any one interest. The State law is that 20 per cent of capital and surplus may be loaned. Is it not a fact that 10 per cent of capital and surplus could be loaned? Thus a bank with $1,000,000 capital and $1,000,000 surplus could loan $200,000.

A. The amount which a national bank is allowed to loan to one individual or to one concern is fixed by Section 5,200 of the United States Revised Statutes, and the whole of that section is as follows: "The total liabilities to any association, of any person, or of any company, corporation or firm for money borrowed, including in the liabilities of a company or firm, the liabilities of the several members thereof, shall at no time exceed one-tenth part of the amount of the capital stock of such association actually paid in. But the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same, shall not be considered as money borrowed." The word "association," as here used, means a national banking association.

33. A bank pays its balance due to another bank in gold. The receiving bank, after verification by count, expresses it to its correspondent, where a very considerable part is found to be light. In making reclamation on the paying bank they only succeed in getting the difference after repeated personal requests and a final peremptory demand.

A. If there is any suspicion that the gold is light weight, it ought to be carefully weighed before receipt in the presence of both parties. Of course a bank that refuses to do what equity requires would steal if there was no law against it. But sometimes a hesitation to do justice in such cases comes from an honest but mistaken notion of what justice requires, or from a doubt as to the statements upon which the claim is made. It is wonderful how valid an excuse seems when it stands as a barrier against personal loss.

34. A person desiring to open an account with a national bank and offering to deposit cash (no drafts) was refused (bank demanding identification of party). Is this a general custom among banks?

A. No bank, unless it is over-anxious for business, will allow a perfect stranger to open an account with it, no matter what he proposes to deposit for that purpose. All first class institutions require a suitable introduction from some one in whom they have confidence, or an undoubted reference before they accept the applicant as a depositor.

35. Is it legal for a national bank having opened an account with depositors two years ago, now to take the position that their depositors must keep a balance of at least two hundred dollars to their credit, or withdraw?

A. No bank, State or national, is obliged to take an account from any private depositor and may therefore make its own terms (not inconsistent with the law) for the reception or continuance of such deposits. The rule quoted would not be illegal.

36. Please inform me if a national bank has a right to charge its customers more than ¼ of 1 per cent exchange?

A. The legal limitation of the charge for the purchase, sale or discount of a *bona fide* bill of exchange, payable at another place than the place of such purchase, discount or sale, is "at not more than the current rate of exchange for sight drafts in addition to the interest." If the "current rate" is more than ¼ of 1 per cent., or even more than 5 per cent., should such a rate prevail, the bank may charge that to its customers.

37. What liabilities the holder of stock in a bank incorporated incurs; what the duties and liabilities of a director in such bank are, so far as law is concerned.

A. Stockholders in every corporation and joint stock association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, except in one or two cases growing out of exemptions in their charter, are individually responsible to the amount of their stock for the debts of the corporation or association. But no shareholder is further liable in his individual capacity for any contract, debt or engagement of such association, unless the articles of association which he has signed shall declare him to be so liable. If the directors or managers of any bank incorporated declare dividends, except from surplus profits, or divide, withdraw, or in any way pay to any stockholder any part of the capital stock, except those whose dissent was entered on the minutes, or who were not present when action was taken, shall be jointly and severally liable to the full amount of the capital stock so paid out.

38. If a man stops payment of a check at the bank, and the bank overlooks the fact and pays said check, who loses it?

A. The undertaking of a bank is that it will pay out its depositor's money in accordance with his latest orders, and not otherwise. Accordingly, it is well settled that a bank is not justified in paying money upon a depositor's check if the depositor has revoked the check before the bank has certified or paid it. An oversight of the bank will not excuse it, it must answer for its own oversights, and not attempt to visit the loss upon its customers.

39. If we send S. & J. our check and the same passes through the hands of one of their employes and he raises the check to a larger amount, and the same passes through the bank, on whom does the loss fall?

A. If a bank pays a check which has been raised after its issue the depositor can be charged only with the amount for which he originally drew the check. This is the rule unless the depositor, by some act of negligence on his part, has made it possible for the check to be raised in a manner

difficult of detection. As to the person to whom payment of the check has been made, however, the general rule is that the bank may recover the amount from him, as money paid without consideration. If the holder has indorsed the check in order to collect it the bank may proceed under the guaranty of genuineness carried by the indorsement.

40. Can a National bank legally loan money on assigned accounts?

A. We know of nothing in the statutes or the decisions of the courts to prevent a national bank from loaning money on the security of assigned accounts. The statute authorizes such banks "to carry on the business of banking * * * by loaning money on personal security." The courts have held that a national bank may take an assignment of contract for the sale of grain for future delivery, and also that they may take an assignment of a judgment.

41. An account is opened in a savings bank. The owner and heirs cannot be found. What disposition is made of the funds, and do they ever become State property?

A. We know of no statute under which a savings bank can be required to turn any part of its deposits over to the State so long as the bank continues in business. The law requires each savings bank to make a report in writing every year to the Superintendent of the Banking Department "concerning such accounts of depositors of amounts of $5 or more as have been dormant for 22 years and upwards."

42. If a depositor in a savings bank demands gold, in withdrawing his deposit, or a part of it, is he not entitled to have gold?

A. This debt, like any other, may be paid, in the absence of a specific agreement to the contrary, in legal tender money, including gold coin, silver dollars and some paper issues. If the bank offers any of these forms of legal tender money the depositor is bound to accept it.

43. What would be necessary for a depositor in a savings bank to do, who, not wishing to lose control of his deposit while alive, would like in the event of his death that his wife might have entire

command of said deposit without the trouble and expense of taking out letters of administration?

A. If the money were deposited in a savings bank in the name of the husband as trustee for the wife, it would remain in his control during his life, and be delivered to her upon satisfactory proof of his death and her identity.

44. Please let me know under what conditions a foreign bank can open a branch in the U. S., and how such a branch would be assessed for State and other taxes.

A. A foreign bank wishing to do business in the United States may open a branch here subject to no other requirement than the payment of the tax assessed against such institutions. The amount of this tax is defined by the banking laws of the State.

BANKRUPTCY.

1. A enters into a contract with B to furnish him a commodity of a particular quality at a certain price for three years, and to pay him a royalty at the end of each year on goods purchased during that year. After the first year A fails to keep up the quality and B declares the contract forfeited under its provisions. A and B then make a verbal contract for the sale of the same commodity, and A ships B a quantity of it. A fails and goes into bankruptcy before B's invoice becomes due. What is the legal status of A and B?

A. This is a case in which the debtor of the bankrupt is entitled to a set-off. Section 68 of the Bankruptcy Law provides that "in all cases of mutual debts and mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed and paid." It is no objection to the set-off, in the case under consideration, that the debt due from the bankrupt was incurred after the debt due to him; if the creditor of the bankrupt had bought the claim from another, or had taken a transfer of it under any arrangement, after he knew that the bankruptcy was inevitable, and had done so with a purpose to use this claim as an off-set to

the claim against him, the set-off would not have been allowed.

2. If A, proprietor of an express company, is adjudged a bankrupt, having at the time money in hand belonging to B due for C. O. D. collections, what is the status of B's claim?

A. If A, an expressman, holds money arising from C. O. D. collections and belonging to B, the money will pass to A's trustee in case of A's bankruptcy if it has been mingled with other moneys belonging to A or his principals, so that it can no longer be identified as the property of B. If it has been kept separate and apart from other moneys B may claim and recover it intact.

3. Please advise me what time is allowed after the referee is appointed in which to file a claim in bankruptcy proceedings.

A. It is provided by the Bankruptcy Act (Section 57 N.) that "claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days, before or after the expiration of such time, then within sixty days after the rendition of such judgment."

4. I file a petition in bankruptcy, and there are twenty-five creditors. Twenty of these creditors are willing to accept a settlement of 25 per cent, but the other five want full settlement.

A. The provision of law concerning a bankrupt's composition with his creditors is "to offer terms of composition after, but not before, he has been examined in open court or at a meeting of his creditors and has filed in court the schedule of his property and list of his creditors required to be filed by bankrupts." Application for comfirmation of a composition may "be filed after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims."

5. A died and left a widow and two children. He left personal estate (no real estate). The children were minors. The widow within two years married B, having administered to her first hus-

band's estate. The widow handed the whole of the first husband's estate to her second husband, B. B entered into a trust agreement in writing to hold the assets of A for the widow until the children came of age. One of the children died and the other came of age and then B, as trustee, handed the whole of the assets over to the child of age. About three years afterward B became a bankrupt and the creditors of B claimed the assets of A's estate and said the transfer to A's child, then of age, was fraudulent and void.

A. We can see nothing at all in the statement of this correspondent upon which to found any claim, equitable or legal, on the part of the creditors of B to the estate now in the hands of A's child or of B and another as trustees, for her. If B had made a free gift of his own property to a child of his wife, instead of simply turning over property to which he had previously held the legal, but not the equitable title, the transfer having been made three years before his bankruptcy, there would be no ground for a claim on the part of B's creditors; their claim becomes even less tenable, if possible, in view of the actual facts.

6. Under the National Bankruptcy law can a creditor of a bank, owing the bank $10,000 for discounted notes, offset this against deposits in the bank of $8,000, if the bank fails?

A. If a bank goes into bankruptcy holding $8,000 deposited by one customer and also holding notes of the same customer to the value of $10,000, the customer will not be compelled to pay his notes in full and then accept the same rate of dividend upon his claim against the bank that is paid to other creditors; he is entitled to set off one claim against the other, as far as it will go, and he can be called upon to pay only $2,000 to the bankrupt institution. The provisions of the Bankruptcy Law, with reference to this matter, are contained in Sections 68a and 68b.

7. A sells B $500 worth of goods on thirty days' time, at the end of which time B pays, and is again credited with the same amount. At the end of a certain time B is thrown into bankruptcy, and A is told that if he would participate in the dividends of the bankrupt's estate he must return all the moneys received from B during the four months prior to his failure. Is this the law?

A. The Bankruptcy Law, as the United States Supreme

Court interprets it, provides that a payment of money in the regular course of business is a transfer of property. If the payment is made within four months of bankruptcy, and the debtor is insolvent at the time, the payment constitutes an illegal preference under the law. If the recipient knew, or had reason to suppose, that a preference was intended the trustee in bankruptcy can compel him to return the amount. If he was altogether innocent in the transaction he is allowed to determine for himself whether he shall return it or not. If he does return it he is entitled to take his place among the general creditors when a distribution of the bankrupt's estate is made.

8. I held a contract of employment for one year as manager with a house that recently failed. I afterwards secured employment at a much reduced salary with another house, and had my claim for damages liquidated and allowed by the referee. No dividends have been paid yet, as the estate is not settled. In order to share as creditor, am I compelled to refund the last four months' salary I drew before the failure?

A. Under the Bankruptcy Law wages are a preferred claim to a certain extent. The first claims to be paid are the necessary costs of preserving the estate, the filing fees in involuntary cases, and the cost of administration. After these come "wages due to workmen, clerks, or servants, which have been earned within three months before the date of the commencement of proceedings, not to exceed $300 to each claimant." The only preference forbidden by the Act is a payment of money or transfer of property the effect of which will be "to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class."

9. A accepted a draft on him; when it falls due he does not pay it, claiming that the goods he received against it were not as desired. According to the laws of this country is he not considered as in bankruptcy?

A. A person does not become a bankrupt under the laws of the United States by simply refusing to pay a claim the justice and validity of which he disputes. Section 3 of the Bankruptcy Law defines acts of bankruptcy.

BEQUESTS.

(See also Legacies.)

1. Please answer, according to New Jersey law:—
A woman died and bequeathed to her married sister a certain sum of money. The sister, however, died before receiving the money, the estate of the first not having been settled, owing to the money having been loaned to other parties and the notes not yet being due.

A. A will always speaks from the death of the testator. When the testatrix died, in this case, her sister was still alive and the legacy passed at once to her. Some time must elapse in every case before a legacy can actually be paid. Meanwhile the legacy belongs to the legatee as much as it does after payment. In the case under consideration the sister might have disposed of it by will. If she left a will attempting to dispose of the legacy that will be effective.

2. An estate is willed by testator to his wife for her use during her life, and at her death to another relative of the testator as follows: "At the death of my said wife I devise and bequeath my estate to my nephew, to have and to hold to him, his heirs, executors and administrators." The wife purchases of the latter all the interest that he would have upon her death, so that she shall have an absolute fee in the estate. Can the intention of the testator be effectually evaded by any such action on the part of the nephew?

A. There is no legal objection to the proceeding described by our correspondent. There is no reason to suppose that the testator wished to deprive his wife of any property, except so far as it was necessary to do so in order to leave something to the nephew and his heirs. The nephew having the fee of the property was at liberty to sell it to the owner of the life estate as well as to any other person.

3. 1. What is the ruling in the case of a bequest to a daughter on condition that she should never marry?

2. A law limits the giving, by will, of property to religious or charitable institutions to the injury of rightful heirs.

A. 1. The courts allow themselves so much latitude in determining questions arising under wills and decide each case according to its own peculiar facts to such an extent that it is difficult to lay down any rules of universal appli-

cation upon a question of this kind. It is reasonably well settled, however, that a condition in a will in general restraint of marriage will be held void as against public policy. Nevertheless, a gift to one female relative until her marriage and then to some other worthy object will be enforced, if the intention of the testator appears to have been simply to provide for his relative until she should secure some other adequate provision, and not to discourage her marriage altogether.

2. Laws providing for the incorporation of benevolent, charitable, scientific and missionary societies, provide that "no person leaving a wife or child, or parent, shall devise or bequeath to such institution or corporation more than one-fourth of his or her estate, after the payment of his or her debts, * * * and no such device or bequest shall be valid in any will which shall not have been made and executed at least two months before the death of the testator."

BILLS.

1. Is the following form of receipt, "Due John Doe one thousand dollars, had of him this day," a good and valid claim upon a man's estate, the amount mentioned being a loan which John Doe made?

A. The document described by our correspondent is not a promissory note, but what is commonly known as a due bill. It does not contain a formal and express promise to pay, as a promissory note does, but, from the fact that the receipt of money and the existence of a debt are acknowledged, the law will imply a promise to repay the amount. The due bill is good evidence of a valid claim, and the claim can be enforced against the debtor during his lifetime, or against his estate after his death.

2. Will you please advise us whether a note issued on April 24, and dated April 30, four months, is negotiable before the latter date, and in case of the failure of the maker before April 30, would the responsibility of the indorser be affected in any way. Also, what effect would it have on the indorser in case the maker died before April 30? As regards a check dated ahead and the maker died before the day that it is dated, would the bank, if it had money on deposit from the maker, be justified in honoring the check?

A. Bills, notes and checks are often antedated or post-dated for convenience, and there is no legal objection to the practice. If a post-dated note is negotiated before the day of its date, this fact affords no legal ground of suspicion, such as to put the indorsee upon inquiry and subject him to the equities existing betwen the original parties. Accordingly, the failure or death of the maker before the day of date does not affect the relations of other parties to the paper. A bank is never justified in paying a check after it has had notice of the death of the maker. If the death had not been brought to the notice of the bank, payment of the check would be justifiable.

BILLS OF EXCHANGE.

1. Would there be any difference in the maturity of two drafts, one reading "at thirty days' sight pay," etc., and one reading "thirty days after sight pay," etc., both being presented and accepted on the same day? The use of the word "after" seems to point to a later period than the word "at."

A. "At 30 days' sight," "thirty days from sight," "thirty days after sight," in their application to drafts or bills of exchange, mean precisely the same thing. "In 30 days," "in 30 days from date," "at 30 days," "30 days after date," are synonymous.

2. Please explain why a promissory note maturing February 22 is not payable Saturday, February 23?

A. Because members elected to the legislatures of some States, toadying to the so-called "labor interest," passed an act providing that "all bills of exchange and promissory notes made after the passage of this act (except those payable at sight or on demand) which shall otherwise be payable on any half-holiday Saturday, shall be deemed to be, and shall be, payable on the next succeeding secular or business day." As the 23d of February next is a "half-holiday Saturday," all such paper that would be payable thereon is legally payable on Monday.

3. It is customary for foreign houses to remit us drafts or checks drawn by some foreign banks direct to our order. These drafts are sent to us by our customers to be credited to their accounts, although

their names do not appear on the documents, and as the banks drawing these drafts never give us any written instructions as to whom the amounts are to be credited, have the drawers any right to claim from us later on these amounts placed to our customers' credit?

A. Bills of exchange and other negotiable instruments sometimes fail to show upon their face, as in the present instance, who are the immediate parties to the instruments. For example, the name of the payee is sometimes left blank when the paper is issued, as may be true in the case our correspondents put; then when the blank is filled up with the name of a payee he appears to have been the original holder. The result is the same, of course, if the name of a payee is inserted when the bill is originally drawn, but it is not the name of the person in whose interest or for whose immediate benefit the instrument is executed. It is well settled, both in this country and in England, that in all such cases parol evidence may be introduced to show what the real relations of the parties were, and that their rights are to be established in accordance with these real relations, rather than with those which appear upon the face of the paper. In the case our correspondents put, for example, the first holder of the bill is the foreign debtor, whose name does not appear upon it at all; our correspondents hold, as a matter of fact and of law, and their rights are the same as if they were *bona fide* holders in good faith and for value, who had taken the bill by indorsement from the original holder or payee.

BILLS OF LADING.

1. Inform us if, when one shipment consists of several cars, it is necessary to make out a separate bill of lading for each car, whether we can insist upon having one bill of lading to cover the whole shipment, and if it makes any difference in the freight?

A. So far as we can find, the courts have never been called upon to decide the right of a shipper to demand a single bill of lading to cover all the goods included in one of his shipments; we are of opinion, however, that he clearly has such a right. The contract is a single one, a contract to carry a certain quantity of merchandise. There is no reason known to us why either party to the contract should

not be entitled to demand that all of it be included in a single document. If the shipper wished to have a number of different bills of lading, each covering only part of a single shipment, the carrier could not be compelled to issue them to him.

2. A draws on B for invoice of goods and sends draft with bill of lading attached, to C, his banker, for collection. C presents draft to B, who pays it. A few hours later B discovers that the bill of lading attached to draft does not cover his goods, but is for goods shipped to another party in a different State. A having attached wrong bill of lading to draft, B could not get the goods on the bill of lading and he takes bill of lading and draft to banker C and demands the money he has paid for same. C refuses to refund the money.

A. Money paid under a mistake of the law applicable to the case cannot be recovered back, but "a party paying money under a mistake of the real facts may recover it back." If the money had been paid to the shipper of the goods, a suit to recover within a few days would be decided in favor of the drawee of the draft. Where money is paid by mistake of fact to a collector, or agent himself innocent in the matter, he is bound to pay it back on demand, while he has it in his possession; but if he has transmitted it to his principal he cannot be held liable to return it at his own loss. In the case submitted, if the banker C had the money still on hand when notice of the error was given him, he is liable for it as he was bound to return it. If he had remitted it to A before he received notice, then B must look to the latter for redress.

3. We shipped from a Southern port a lot of goods (165 bales cotton) on through bill of lading to Liverpool. The bill of lading was signed by the railroad official and sent to us, but for some reason the goods were not forwarded by the steamer named in the bill of lading, but remained on this side for two months, after date of bill of lading. It is proved that the goods arrived in the shipping port in good time to be shipped by the steamer they were booked for. When the goods arrived abroad our correspondents refused to accept them, owing to late arrival, which entailed considerable loss.

A. A bill of lading, like any other contract, may be enforced according to its terms, and any loss arising from a

failure to act in accordance with it may be collected from the person in default. In the absence of a valid legal excuse a carrier is always answerable for damages caused by a delay beyond the ordinary time. In the case put by our correspondent—if an authorized agent of the steamship company signed a bill of lading agreeing to ship goods by a particular steamer, the company may be held for any damage arising from a failure to do so.

4. We have a bill of lading for a car load of goods shipped to us from California. The bill of lading plainly states total weight and rate of freight per 100 pounds. On arrival of goods here we find that the freight bill calls for a rate 60 cents per 100 pounds in excess of what it ought to be. Are we compelled to pay this excessive rate and wait an indefinite time for refund of said overcharge?

A. According to law the bill of lading governs the through rate, and the receiver may tender the price called for in that contract and demand the goods. If delivery is refused he may bring suit and recover damages for the detention of his property. But it is an every day occurrence that the New York Central, or other road from which the goods are offered at this end of the route, demands a higher rate than the contract price, offering, if this is paid, to take the claim of the owner and to collect it from the carrier at the other end. The receiver may refuse and stand on his legal rights.

5. A party here ordered a piece of machinery, and instructed the house to draw at sight with the bill of lading attached. The draft was paid and the bill of lading was sent to the depot, but the agent refused to deliver on it, as it was not the original, only a duplicate. Can the agent justly refuse to deliver on a duplicate?

A. The rule generally enforced by the courts of this country is that it is the duty of a carrier to deliver goods to the first person who presents a bill of lading making the goods deliverable to him, though this is only one of a set, provided the carrier has no notice of any other claim to the goods, or knowledge of any circumstance which creates a reasonable suspicion that the claimant is not entitled to their possession. In the case put by our correspondent the carrier

cannot defend his failure to deliver on the ground that the bill of lading was a duplicate, but must show some tenable ground for supposing that a right to demand delivery was in some other person.

6. We shipped a bill of goods to A in Louisiana drawing with bill of lading attached as per instructions. The draft with bill of lading attached was returned to us unpaid. We then instructed B to take possession of the goods for our account. B finds that A has got possession of the goods, sold them and skipped. On examination we find our shipping clerk billed the goods to A instead of to order.

A. The carriers had a right to deliver without asking for the bill of lading. When goods are shipped to order the bill of lading is essential to see who is entitled to the property. But when goods are shipped to John Smith, all that the bill of lading promises is to deliver to the said Smith. If the carriers make such a delivery they have fulfilled their contract, and are not liable to anybody for the result. The mistake of the clerk is fatal to the shipper's claims.

7. We buy in a foreign market a parcel of coffee. The goods are shipped consigned to "Order." Draft against the purchase has been drawn at three days' sight in full payment and accepted. The documents are not attached to the draft but are sent to us direct by mail. Have we right to indorse bill of lading for shipper?"

A. If there is no doubt whatever that the seller of these goods intended to indorse the bill of lading before sending it (and all the facts of the case taken together seem to leave no doubt upon this point) then the action of the seller is equivalent to a power of attorney authorizing our correspondents to indorse the draft in his name. This authority being granted, of course, there could be no valid objection to such an indorsement.

8. You say the seller is responsible for any damage if the ocean bill of lading is taken to his own order until such time when the bill of lading, duly indorsed, is delivered to the buyer. In the case I referred to you—that is, the sale of 200 bales on c. i. f. c. i. terms—the bill of lading was made "to order," indorsed by me and attached, with the insurance certificate, to a 60 days' sight draft on the buyer. Is shipper or seller liable for damage until bill of lading reaches buyer?

A. When goods are sold on c. i. f. terms the seller does not necessarily take upon himself any risk during transportation of the goods. If he chooses to regard the carrier as an agent of the buyer he is entitled to do so. If he will insure the goods in the buyer's interest and then turn them over to a carrier for unconditional delivery to the buyer he has done his full duty under the contract; the buyer must look solely to the insurer or the carrier, and he must pay for the goods whether they ever reach him or not, or though they reach him in a badly damaged condition, provided the damage did not result from the seller's faulty packing. But the seller is not bound to throw this risk upon the buyer. He may allow it to remain with him if he chooses to do so. In that case he makes the bill of lading deliverable to his own order, and then the goods and the risk are both his until the bill has been indorsed to the buyer and turned over to him, or to some one for him.

9. John Doe receives an order from Richard Roe for certain goods to be shipped with specified marks, bills of lading to be made out "to order." So far as we know, there are three methods of making out such bills of lading: (1) They may be made out to John Doe as shipper, with the words "to order" written in the space reserved for the consignee's name and then indorsed in blank by John Doe. (2) They may be made out with John Doe's name as shipper and in the blank reserved for the name of the consignee "Richard Roe or order." (3) They may be made out in the name of Richard Roe as shipper, with the words "to order" in the blank reserved for the name of the consignee. Are the three forms correct; which is preferable?

A. Any one of the three methods proposed by our correspondent would seem to come under the definition of a shipment "to order." The distinguishing feature of a shipment so made is that the goods are not deliverable only to a certain person named in the bill of lading, and no other, but that the bill is transferable by indorsement and thus becomes a quasi-negotiable instrument; it may then be used as collateral for a loan, if the need arises, and this is equally true of any one of the forms set forth by our correspondent. The first of the three forms, as they here stand, is the one, we believe, which is in most common use. The second

form is frequently employed, and its use may possibly be as common as that of the first form. The third is the form least used. It is certain that in any case the carrier would refuse to deliver the goods to anyone except a person holding the bill of lading properly indorsed, and it is equally certain that delivery would be made, in any of the three cases, to the person who did hold the bill properly indorsed.

10. The bill of lading was made out by the shipper on one of the steamship company's Tampico forms, although it was clearly written thereon in a prominent place "through to ——." The shipment upon arrival in Tampico was left there apparently in the custody of the Custom House. When inquiries as to its whereabouts were made, owing to its non-arrival at destination, it was found that every package was empty. The shipper claims on the steamship company, who answer that their bill of lading was only to Tampico notwithstanding the clause thereon "through to ——." Is S. S. Co. liable for goods?

A. It is well settled by numerous decisions that written words in a contract are always to be considered more important and to be allowed to prevail over printed words. Printed forms are intended to be used only so far as they may be applicable to the particular case in question, and they are very frequently amended by writing in words inconsistent with what is printed. When this is done the written words are to prevail even if they are inconsistent with some part of the printing which is left uncancelled. Accordingly, when any one signs a contract, or becomes a party to it, he is bound especially by those parts which are in writing if no device has been used to deceive or mislead him.

11. A trading company in this city, A, gets an order for seeds from a customer in Java. He ships them through a forwarding agency, B, also in this city, on a bill of lading to A's order. On the bill of lading application is to be made to B's agent in London. A, without noticing to whom application is to be made, forwards the bill of lading to his customer. The customer, either through not understanding the bill of lading or through stupidity, instead of applying to B's agent wires to A informing him that he is unable to find the consignment, and before he receives the necessary information the market for the goods is over and he refuses the consignment. A now claims that B is liable for the loss on account of the bill of lading not

having been made for "application to be made to an agent in Java." B claims that he is not liable, and holds that he can only be held to the terms of the bill of lading issued by him, which was to shipper's order and accepted by A at the time the shipment was made. Which is right?

A. The contention of B in this case is altogether sound and tenable. Having received no special instructions as to the form of the bill of lading desired, he issued one which he supposed would be satisfactory to A. It was satisfactory; at least, A made no objection to it when it was submitted to him. When A finds that some part of the agreement between himself and B has turned out to his disadvantage, it is then too late for him to object to it, the contract meanwhile having been carried out. The time to object to a bill of lading is the time at which it is presented to the shipper.

BONDS.

1. Having lost some coupons of railroad bonds I am willing to give an indemnity bond, but the company declines to accept it and refuses payment, under any circumstances, except on presentation of coupons. What redress, if any, have I?

A. The loss of negotiable paper does not alter the contract which the several parties to the instrument had entered into. Their rights and liabilities remain the same, with this exception, that those called upon to pay may rightfully demand security against any other or greater liability than that to which the contract binds them. This security being furnished, the owner of the lost instrument is entitled to payment, independently of any statute on the subject.

2. A alleges he sent by mail to B his note in payment for merchandise. B acknowledges receipt of the letter in which said note is advised to be inclosed, but writes back to A that no note is found, and demands the note. Must A give another note?

A. In the case which our correspondent puts, if the note was negotiable, A cannot safely give B another note, nor can he be compelled to do so, unless B is willing to furnish a bond indemnifying him against any claim which may arise out of the first note. If the note was not negotiable

the courts hold that the holder may sue upon it after its loss and recover without furnishing indemnity.

3. The enclosed memorandum relates to the deposit of coupon and bearer bonds to secure a loan to A. B. by C. D. These bonds are quoted on European bourses, not here. The loan was made nearly ten years ago, but yet is partly unsatisfied. There are other securities, such as mortgages on real estate, etc., to secure the loan. C. D. will have to resort to the bonds to repay his loan, and he is met by a claim that these bonds were surreptitiously dealt with by A. B. or some one in his employ. Can C. D. be ousted of his rights?

A. It is well settled in practically all of the States, as well as by decisions in the United States courts, that a *bona fide* holder of a coupon bond who takes it for value, before maturity and without knowledge of any flaw in the previous holder's title, takes the bond free from all claims by any other person. Even in cases in which the bonds have been stolen the courts have confirmed, not, of course, the title of the wrongful taker, but that of any *bona fide* holder whose title came from the latter directly or indirectly.

4. Some years ago 4 per cent coupon bonds of the Argentine Republic were dealt with fraudulently. The employe for three or four years took the interest by collecting the coupons in Europe through the agents of the republic in Europe before the theft was detected. The bonds were sold by the employe to one person and then passed to another, and finally became located in the hands of a person (an innocent purchaser for value without any notice of the theft), who contends that as he purchased in a legitimate manner the bonds, and as they are coupon bonds to bearer and negotiable by delivery, he has a good title to same and the losers or original owners have no claim to them. Is purchaser's title good?

A. When corporate or government bonds, instead of being registered, are issued with interest coupons attached and made payable, both as to principal and interest, to the holder or bearer, this is generally done for the express purpose of making the bonds more readily negotiable by releasing the purchaser from the necessity of inquiring closely as to the holder's title. The burden must be accepted with the benefit; if bonds are to be put in a form to enable the owner to dispose of them more readily, this can only be done by allowing the buyer to take them safely with less investi-

gation than would be required in the case of registered bonds. Accordingly, the courts of States, as well as the Federal Courts, have always held that a *bona fide* purchaser of such a bond, after it has been stolen, takes a good title to it.

5. Please advise me as to the nature of an "income bond"; what security is given the holder of such a bond, etc.?

A. An income bond is a bond the interest on which is payable, not annually, but only when the income of the corporation is sufficient to pay the regular charges and interest absolutely and unconditionally due from the corporation and to leave a surplus which is applicable to the income bonds. Income bonds differ from preferred stock chiefly in the fact that they have no vote. They are generally, but not always, secured by a mortgage.

6. Please advise me whether it is properly legal to require a surety bond from a financial officer of a semi-public corporation where said officer receives no salary or emolument, acting in an executive position only, the work being done by clerks although his signature is required on all checks and in his absence the president or vice-president is authorized to sign.

A. Any person who handles money belonging to others may reasonably be required to give a sufficient bond conditioned upon his accounting duly and properly for such money. The bond is equally legal and binding whether the person in whose behalf it is given is in receipt of a salary or not. The consideration for the bond would not be the salary paid, in any case, but the fact that the bonded officer was allowed to hold the position and handle the money.

BOOKKEEPING.

1. In opening a set of books for a corporation which we will say is capitalized at $300,000, of which there is $200,000 paid in, to what account would you charge the balance, $100,000?

A. If the charter of the corporation provides for a total issue of $300,000 in capital stock, and only $200,000 of such capital stock has been sold for cash or property, in

that case there would be only $200,000 of capital stock outstanding and it would not be proper to represent in the accounts of the company the $100,000 of capital stock not issued. If, however, by action of the board of directors, the issue of the remaining $100,000 of capital stock had been authorized for a specific purpose then the account to which said issue would be chargeable would depend upon the purpose. One purpose might be to place the $100,000 of capital stock in the treasury of the company, subject to future action by the board or the action of the president or treasurer of the company under specific direction of the board. In such case it would be proper to credit capital stock account and charge capital stock in treasury account, each with the amount of $100,000 as representing par value of the capital stock placed in the treasury by action of the board.

BROKERS AND BROKERAGE.

1. I go to a broker and ask him what a certain bank stock is worth; he tells me $116 per share and his commissions are 25 cents per share for selling. I tell him to sell it. He returns me $1,157.50 for ten shares, which is $116 per share, with 25 cents per share off as commission. I afterward found out from the party who purchased it that he got $118 per share for it, or $20 more on the ten shares than he returned to me. Am I not entitled to all the stock sold for?

A. If the broker bought the stock himself of our correspondent at $116 he had no right to charge commission. But if, as appears from the statement, he took it to sell on commission, he must account for all he got for the stock, and pay the same to the seller, less his commission. This is not only right in equity, but if he refuses, he can be compelled to do it by legal process.

2. Are the commissions to a broker, say 1½ or 2 per cent, payable on the gross amount, or after deduction of the discount for cash which is universal in this business?

A. In the absence of special contract a broker's commission is determined by the custom of the time and place. The custom is to charge commissions on the gross amount.

3. A, a broker in coffee, sugars and teas in New York city, has an offer from B (owner of real estate in New Jersey) to trade for real estate in Brooklyn, which is owned by C in Brooklyn, and the deal goes through. Is there any law in New Jersey that will prevent A from getting his commission from B?

A. A broker need not be established in New Jersey, in any sense, in order to be in position to claim commissions on sales or exchanges of land made by him. The contract under which he is to claim commissions must, however, be drawn in conformity with the requirements of the New Jersey statute of frauds.

4. We sell some goods to arrive through a broker; vessel is lost and no delivery takes place. Does the broker lose his commission?

A. A broker earns his commission when the bargain he is employed to make has been concluded. This is the legal aspect of the case. In most trades the broker does not seek to collect his commission where the sale falls through, and there is no delivery.

5. White is a North Carolina cotton broker. Black is a Georgia cotton dealer. Green is a North Carolina cotton mill. Black gives White authority to sell for his account 200 bales of cotton at a certain price. White sells to Green and reports by wire to Black. The customary broker's sale notes are sent by White to Black and Green. Contracts made out by White are signed by Black and sent to Green and by Green and sent to Black. These contracts stipulate that the trade is governed by Carolina mill rules. One of these rules says: "Unless otherwise agreed, shippers' reimbursement shall be by sight draft with bill of lading attached." The first hundred bales was shipped as per contract, but instead of promptly paying the draft, Green asked the bank to hold it until the cotton should arrive. The bank reported non-payment and was instructed to return it if still unpaid. It was returned and the cotton was diverted to another point. The day after the draft was returned, Green begged that it be sent back, but Black refused. The second hundred bales was shipped, drawn for and the draft promptly paid. Black now refuses to pay White brokerage on more than 100 bales, claiming that the first hundred did not go through.

A. The contention of the broker is perfectly sound in this case unless it was expressly agreed that he was to have

a commission, not on the amount of cotton sold, but on the amount delivered and accepted. The broker was employed to sell 200 bales of cotton at a certain price. He did precisely that; he sold 200 bales at the price named. The moment that was done his commissions on the 200 bales were earned. He was not a party to anything that happened afterwards; if there was any default it was not his and there is no reason why he should suffer for it. If the cotton is not accepted that is the fault either of the seller or of the buyer. If it is the seller's fault he is clearly not in position to ask his agent to bear part of the penalty; if it is the fault of the buyer the seller has an adequate remedy against him at law, and there is no reason, in that case either, why the agent should lose anything.

6. As brokers we have sold goods for a house which has since failed, owing us commission. Will you please let us know if we must come in as a general creditor, or does a brokerage take any preference over other debts? We understand that in Massachusetts brokerage debts come under the same head as labor debts.

A. A broker has a lien on the goods in his hands for commissions and expenses incurred in the handling of those goods, and also for claims against his principal arising out of previous transactions. But if he allows the goods to leave his hands without enforcing his lien, he then stands upon the same footing as any general creditor, and his claim has no preference either in Massachusetts or New York.

7. A instructs B, a broker, to buy for him two car loads of July wheat, without any agreement as to margin, but pays a certain amount for that purpose. The market declining, more margin is called for but not forthcoming, and the broker threatens to sell and does sell at a loss contrary to the positive instructions of A. Can A insist on the actual delivery of the wheat in July?

A. Under the rule of the trade the buyer of wheat for future delivery in this way is obliged to maintain a margin sufficient to protect the seller from loss. If wheat declines the buyer must follow such decline with fresh contributions.

As he refused, the broker's sale was according to the rule, and the loser has no remedy.

8. Some time ago 100 shares of a certain stock were bought at 34. At the time $1,500 margin was deposited with the broker. The broker who bought the stock failed about six months ago, and up to the present has not made a settlement. When he failed the stock was at 30; to-day it is selling at 65. Has the purchaser of the stock any right whatsoever to the stock, or is his claim only for the amount of margin deposited?

A. In such a case as this the customer owns the stock from the time it is purchased, and the stock is pledged to the broker as security for the payment of part of the purchase price, which the broker has loaned to his customer. Their relative rights and obligations are just what they would be if the customer had bought the stocks and paid for them in full and then had brought them to the broker and pledged them as collateral for a loan made by the broker to him. If the loan is not repaid, in either case, the broker may, after demand of repayment, give notice of the time and place at which he proposes to sell the pledge, and may then sell it accordingly. But at any time before such sale is made, pursuant to a notice of this kind, the customer may tender the amount of the loan and demand an immediate return of his stock. If the broker cannot, or will not return the stock, he is guilty of conversion and may be proceeded against accordingly; he is also guilty of a breach of contract.

9. We let a loft from May 1 to Feb. 1 (nine months), through an agent, at a stated amount per annum, payable monthly. Has the broker a right to charge us his commission for the annual amount?

A. A broker who lets a house for nine months is not entitled to commissions upon a year's rent unless he becomes so by special agreement. There is no custom among the brokers in accordance with which his claim would be valid. His commission in such a case is to be determined by his agreement with the landlord, or, if there was no agreement, by the value of his services.

10. A, who does not reside in the city, requests B, who resides here, to act as his purchasing agent in this market. A agrees to pay B a commission. At first all purchases were practically made through

B, but later A sent duplicate and other orders direct, and finally only very few orders were placed with B, and these were of such nature as to cause difficulty to have them executed by correspondence. B ceases to be A's agent, and requests settlement. A desires to pay commission but only on actual purchases made through B, and B on the other hand claims commission on all purchases made in this market.

A. The question of commissions to agents is one never to be settled by any fixed rule, and the legal decisions are as various as the courts in which the cases are tried. This is especially true with selling agents, as one who has hunted up a customer, or even spoken to one about the property he wishes to dispose of, is often awarded a commission, although his share of the work went no further. But a purchasing agent is not either by law or custom awarded a commission on a purchase with which he had no direct connection, and we do not think in the case before us B can claim anything except upon the bills which passed through his hands, or upon the goods he has ordered.

11. Please give brief extracts from some of the cases which are said to hold that an insurance broker is agent of the insured, rather than of the company, and that payment of the premium to the broker does not acquit the insured, as towards the company, unless the broker sees fit to pay the money over to the company.

A. Held that "a mere insurance broker cannot be converted into an agent of the insurance company without evidence of some action on the part of the company, or of facts from which a general authority to represent it might be fairly inferred." "Where a broker had negotiated insurance under a standard policy providing that 'in any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of the company,' and delivered the policy to the insured, who two months later, upon demand of the broker, paid him the premium, which he failed to pay over to the insurer, the fact that the policy was entrusted to him for delivery did not of itself exonerate the insured from a subsequent payment of the premium, and the insured remained liable to the insurer therefor."

Other cases hold that the broker is agent of the insured for all purposes, including the handling of the premium.

12. A consigns to broker 1,000 barrels of flour for sale on his account. B sells the flour at $5.40 per barrel and reports the sale to A. But a claim for damages being established, B allows a reduction of $1 per barrel. In remitting his account should B deduct his commission of 2½ per cent. on the original proceeds, or on the net proceeds after deduction for damage?

A. In the absence of agreement or a well settled custom to the contrary, the courts hold that a factor or commission merchant is entitled to commissions only on the amount of money actually realized for his principal after damage allowances have been made.

13. We gave G, a commission merchant and broker, the price of 7 cents per pound for bagging. He asked if he sold the goods at 7½ or 8 cents per pound whether we would allow him the difference from our price and what he sold the goods at; we told him we would, we charging the goods to whoever he sold them. A few days afterward he came with an order and shipping instructions to be shipped to L at 8 cents per pound. The goods were shipped and invoiced as per his order. After a few days we received notice from L that he bought the goods by the yard, not by the pound. We saw G and also saw his letter book, which was distinctly per pound. We at once notified L of the same and that it was his mistake and that we looked to him for payment. He refused to take the goods except to pay at 8 cents per yard, and stated that he overlooked the pound, and thought it was per yard. We requested the goods to be returned at once, and notified G we had done so; we paid the freight both ways and sent freight bill to G requesting payment of same. He refused to pay, as it was not his mistake, but that of L. We tell him he must pay us and then look to L for same, as L was his customer, not ours.

A. G was to find a buyer at 7½ or 8 cents a pound and our correspondent was to ship the goods and collect the bill and pay to G the excess above 7 cents a pound. G supposed he had made such a sale at 8 cents and gave L as the customer. If it turned out that G had made no such sale, then all the expense which our correspondent had incurred in sending out the goods and getting them back could be properly charged to G's account. But this is the very point in dispute. G contends that he did make that sale; L denies it,

and says he bought the goods at 8 cents a yard. The facts are, therefore, in dispute. The letter-press copy in which it is stated that the price is per pound would not be conclusive against L if he had previously bought the goods at a yard price. It may be said perhaps that the owner of the goods should not have consented to their return until the question at issue had been decided. If G was in a condition to assume the responsibility, and to stand between the owner and L in the law suit, this might answer; but the owner could hardly be expected to engage in a law suit to secure to G the profit he hoped to make. We think that as the goods were sent at G's order, and the sale did not stand, that G must be held responsible for the cost of the transaction, and reimburse himself, if he can, out of his customer.

14. A party sells a cargo of merchandise for account of a foreign house on a basis of "cost and freight." The shipper sends the invoice and from same he deducts the freight. Commission on what?

A. In the absence of a special agreement the amount of a broker's commission is to be determined by the custom of the time and place. The custom at the present time is to collect upon the gross amount of "cost and freight."

15. The goods arrive here, but on examination do not turn out exactly like sample. Acceptance is refused on this account. A long correspondence follows and the manufacturer finally consents to have half of the goods transferred to consignment account, while the other half is applied against the order. He fixes at the same time a limit below which the consigned goods are not to be sold. While these negotiations have been going on the commission merchant succeeded in selling the consigned goods, or at least the larger part of them, at about 10 per cent. above the limit fixed by manufacturer, or at about the original order price. Settlement on what basis?

A. The consignee must return the goods he sells on consignment at the price he obtained for them. The owner of goods consigned for sale often affixes a price below which they cannot be sold; but he is entitled to the benefit of whatever can be obtained for them above that rate.

16. As brokers, we sold for a packer a carload of canned goods, futures, and submitted samples to buyers, who approved of same.

We then made a contract and had it signed by the packer, but when the buyer received the contract he wanted the following clause inserted: "to be like sample submitted," and we returned the contract to the packer to be amended. But he refuses to insert the clause or return the contract to us. Are we not entitled to a commission?

A. In order to make his commissions a broker must make such a contract, or find a buyer willing to enter into such a contract, as his principal has authorized him to make. If the principal, in the case under consideration, authorized the broker to stipulate expressly that the goods supplied should "be like sample submitted," the principal is bound to pay commissions in this case. If there was no such authorization, but simply directions to exhibit samples and make sales, then the principal was not bound to agree to the condition insisted upon by the buyer; the sale was not made, it was no fault of the seller that it was not, and the seller is not bound to pay commissions.

CERTIFICATES.

1. A physician neglected to furnish the Bureau of Vital Statistics with a notice of birth. What steps can be taken by the parents to avoid certain legal complications?

A. The law makes provision for recording a birth in cases of this kind, if sufficient evidence of the fact can be produced. Either the physician, or one of several physicians, if there were more than one, or the nurse, or some other person who was present and assisted at the birth in some active capacity, must certify that such a birth occurred at such a time. Then two citizens must certify that they knew of the fact at the time, and also that the physician, nurse or other person whose certificate is presented, "is a reputable person of good standing in the community in which he or she may reside."

CERTIFICATION.

1. Is a bank obliged to certify a check when requested if drawer's account is good for the amount, and when is the check charged to the drawer?

A. No bank is obliged to certify a check, no matter who the drawer may be, nor how much money he has to his credit. It may refuse to certify and the holder can only demand payment. The certification is merely a convenience to both parties. The certification of a check is to the account of the drawer precisely as if the bank had paid the money. The bank, by its certification, becomes responsible for the payment and it charges the amount at once to the account of the drawer the same as if it had actually paid the money.

2. The bank having become obligated to pay the face of an unaltered check, after certification, what difference does it make who presented it to the teller for that purpose—whether it was the drawer, payee or any other person?

A. Certification of a check at the request of the drawer has the same effect as its certification at the request of a holder, except in one regard, that is, the obligation of the drawer after the check is certified. A delivers his check to B uncertified. B takes it to the bank and finds that there is money there to pay it. He can have the money, if he chooses, but, for some purpose of his own, he elects to have the check certified and to leave the money with the bank. Of course, that act releases, and ought to release, the drawer A. There is no way in which he can get his money out of the bank, and it is not equitable that B should allow it to remain there until the bank fails, and then should be in position to return the check to A and demand payment of the amount. The rule, therefore, is this: If B takes A's check to the bank and has it certified A is immediately released and B must look to the bank alone. But, suppose A takes his own check to the bank and has it certified, and then delivers it to B. B accepts the check and hurries to the bank with it only to find that the bank has closed its doors between the time of certifying and his arrival there. Is there anything in this state of facts that should release A? Most of the courts say there is not, and we think that they are right. This is not, like the other, a case in which B had an opportunity to get his money, and chose to neglect it;

he has made every effort to get it, and has failed; it was not B's fault, but A's, that the money was allowed to remain in the bank until it became insolvent, and A should bear the loss.

3. In payment for merchandise a check was offered to us to-day. We telephoned the bank upon which the check was drawn and asked if it was good. The answer was "I will see," followed by "Yes; check is good." Upon presentation of the check at the bank within half an hour certification was refused, on the ground that the drawer of the check had made a deposit of checks to meet his account, but those checks were not certified. In the meanwhile we had delivered goods to the value of the check. If the check is not paid have we any redress against the bank, the goods having been delivered because of the bank's answer to our telephone query?

A. If the check described by our correspondent is not paid the bank cannot be held liable for the amount under the statutes and decisions. The certification of a check is held to be to all intents and purposes identical with the acceptance of a bill of exchange, and it is provided by statute that "no person shall be charged as an acceptor of a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent."

CHARTER PARTY.

1. A vessel arrives from Calcutta with a cargo of jute and begins discharging, the goods going into bonded warehouse. Now we are presented by the agents of the ship with a bill for fire insurance premium on the whole amount of freight for a period of one month, which agents claim they were obliged to cover to protect themselves against loss by fire after landing, which we decline to pay, freight having been paid.

A. In the absence of any stipulation in the charter-party or the bill of lading, we know of no ground upon which the shipper could enforce such a claim as that referred to by our correspondent. We do not find that there is any custom at this port compelling a consignee to reimburse the shipper for any insurance he may have effected upon the cargo, and cus-

tom is the only ground upon which we could found a valid claim, in the absence of agreement.

2. A makes a contract with B, who is a canal transportation agent, to bring 240 net tons merchandise from a point on the Erie Canal to New York for $250. B has no boats of his own and he makes a contract with a canal boat captain who is going up the canal to bring the cargo on his return trip for $225. When the boat has 220 tons on the captain refuses to take any more, giving as a reason that his boat is then drawing more water than allowed. The captain receives $175 advance from B, and after the arrival of the boat and delivery of part of the cargo A pays B $200 on account. When the boat is unloading, the captain failing to collect from B the balance which he claims is due him, makes a demand on A for it. A refuses to pay, as the bill of lading reads "freight as agreed payable to B, agent, New York," and because the quantity, namely, 240 tons, had not been loaded on the boat, although the full quantity was offered the captain. It transpires subsequently that B's contract with the captain was to carry 175 tons or a boat load. Who is right, the captain or A, who contends his contract is with B?

A. The lien for freight which the owner of a boat has upon the cargo is a privilege which he may waive by contract. Accordingly the lien is held to be waived if there are any stipulations in the contract of shipment inconsistent with its existence, or if there is an agreement by which the freight is to be received at a time and place and in a manner having no reference to the delivery of the cargo. In the case under consideration the agreement in the bill of lading for payment to B, and the delivery to the consignee are sufficient to release A from his personal liability to the boat owner.

3. A bark arrived from the West Indies loaded with sugar. Charter party reads: "Unloading according to custom of port of discharge." On August 14th the vessel entered at Custom House; same day sent letter and notice to the consignee of the cargo; in the afternoon same day vessel received dock order. August 15, 7 A. M., vessel arrived at the dock appointed, but did not commence discharging. On the morning of the 16th took out general order at Custom House, but vessel did not discharge on account of the dock being full of goods. The 17th the dock was also blocked up with goods, so the vessel could not discharge any cargo. The 18th was Sunday. The 19th discharged two and a half hours, and during

that time the weather was fine and no rain. The captain of the vessel sent bill for demurrage. Is the vessel entitled to the demurrage claim?

A. When there is an express contract on the subject of demurrage the parties are held strictly to its terms, and, in general, no excuse is available for delay which is not stipulated in the contract, though the delay happens without the fault of either party. But in the absence of such express contract, the consignee is bound only to use due diligence on his part, and the shipper cannot recover for any delay arising from the custom of the port without the fault of the consignee.

4. How long can the clause, "Customary dispatch"—loading and discharging in a charter party—hold a vessel to wait for her cargo?

A. Under a clause in a charter-party stipulating for "customary dispatch," it is a question for the jury to determine in each particular case whether there has been unreasonable delay on the part of the defendant in loading or discharging. It is a conclusion of law, however, that these words do not excuse any delay or negligence on the part of the consignee or owner of the goods. The words are inserted simply to excuse him for delays arising from usages of the port which he cannot control, such as the number of working hours, the order in which vessels must come up to the wharf, the observance of holidays and the like. "Customary dispatch" has been defined by the courts (2 Fed. Rep., 396) as meaning "dispatch in accordance with or consistently with all well known and well established usages or customs of the port." Accordingly it has been held that the charterer will not be allowed, except in unusual and unforeseen circumstances, to plead any delay arising from the discharge or loading of other goods consigned to himself or under his control.

CHATTEL MORTGAGE.

1. A, who lives in Brooklyn, Kings County, purchases a restaurant in Manhattan, New York County, from B, who lives in New

York County. A gives a chattel mortgage on the fixtures of the restaurant to B. Where is that chattel mortgage to be recorded?

A. The chattel mortgage should be filed in the office of the register of Kings County, and also in the office of the register of the city and county of New York. The rule under which registration is to be made in a case of this kind is thus stated in the statute: "If the chattels mortgaged are in the city of New York at the time of the execution of the mortgage, the mortgage or a true copy thereof must be filed in the county where the mortgagor alleges to reside at the time of the execution of the mortgage, and in the county where the property is situated."

CHECKS.

1. When a creditor is paid by check how long a time has he in which to present the check at the bank and get his money?

A. The holder of a check is bound to use reasonable diligence in presenting it for payment to the bank upon which it was drawn. When the bank is in the same town in which the holder of the check lives the courts allow him, in all ordinary cases, to present it upon the day on which he receives it, or the next day. During this time the money is at the risk of the drawer of the check, but after this time the holder takes the risk of the bank's failure.

2. A issues his check on B, a banker, and sends to C, his creditor in payment of bill due. C indorses and sends this check to D for collection. D presents the same to B for payment, but B refuses unless D indorses. D being a banker, claims that if he write "Paid" across the face of the check and signs his name with date, that it is sufficient.

A. If the previous indorsement is in blank, D's indorsement is not required. But if C has indorsed it to D, the latter must indorse it to make it payable.

3. A person in Pennsylvania owes us for bills past due, and gives us in settlement his check on a Pennsylvania bank dated ten days ahead. The check was sent to the bank when due and returned, the cashier stating that the drawer had no account in that bank. What is the proper course for us to take?

A. As no consideration was given for the bogus check the issuer cannot be punished. Besides he may have expected to open an account in the bank before the check was due.

4. A gentleman presents a check at a bank where he is well known, drawn to the order of his wife and indorsed by her in blank. The teller asks him to add his indorsement below that of his wife. Has the bank a right to require his indorsement or not?

A. We suppose the bank asked for the husband's indorsement as a guaranty of the genuineness and sufficiency of the previous signature. Legally, it had no right to do it, and the check was payable as presented.

5. In collecting a bill A receives a check dated January 28 and receipts bill January 21, the date of collection. Should the drawee die in the time intervening, and the bank refuse to honor the check, can A hold the estate for the amount?

A. The post-dated check is ample evidence of the debt, and the claim is good against the estate.

6. A customer buys a bill of goods from me; when the bill becomes due he pays by check, the same being made out to my order. I happened to be out of town at the time, and my bookkeeper steals the check, forges my indorsement, and also indorses it, and goes to a friend and has it cashed. This man gives it in payment of merchandise to another house, who in turn deposit it in the bank. Who is liable for the amount paid?

A. The "friend" who first cashed the check and then passes it must lose it, if the bookkeeper cannot be caught and made to refund. All the others fall back on him, and he has only the bookkeeper to look to for his money.

7. We received a check and it was deposited by us in our bank. Two weeks after our bank advised us that the check in question had been lost in the mails between banks, and requested us to procure a duplicate. The drawer refuses to send us a duplicate, saying, "I have your receipt and the money is in the bank to pay the check when presented." Is there any means by which we can compel the drawer to issue an order of some kind on his bank or compel him to put either our bank or ourselves in possession of the amount of the check?

A. The holder of a check or other commercial instrument, not in negotiable form, may demand a duplicate to re-

place the lost paper, or he may sue without having received a duplicate, prove the issue and loss of the original document, and recover notwithstanding the loss. Inasmuch as the paper was not negotiable no person who may have found it, or taken it from the finder in the course of business, can come forward and enforce it. But if the lost check was negotiable and was payable to bearer, or if it had been indorsed before the loss so that it could be enforced without forgery, the drawer must be protected. An innocent holder for value of that paper can collect it by suit, even if the original holder has been paid or a duplicate has been issued to him. He may still be called upon to issue a duplicate, but the person making the demand must accompany it with an indemnity bond sufficient to protect the drawer of the check.

8. A check was drawn by a firm which dissolved immediately thereafter; in fact, the check was drawn as part of the process of winding up the firm's business. We hold the check now, with several indorsements upon it. What course shall we pursue?

A. A check upon a bank, whether it is drawn by a firm since dissolved or by any other firm or individual, should first be presented to the bank. If any arrangement has been made for payment by the bank, which is not at all unlikely, nothing further will be required. If the bank refuses to pay it the holder must look to the various indorsers and the drawer of the check. He has a perfect cause of action against any one of them, inasmuch as a failure of the bank cannot be alleged as a reason of his inability to cash the check there.

9. A is indebted to B for three bills, and tenders a check for a certain amount in payment of all the bills. There is a difference in their respective accounts. B accepts this check and claims the difference from A, whereupon A claims that the check was made payable to B in full settlement of all the bills and calls attention to the fact that his check read that way. Does this relieve A of the difference?

A. If A owes B a certain amount of money, and there is no doubt as to the amount due, however much A may desire to escape with a smaller payment, and if A sends B a

check for less than the full amount, saying: "This is payment in full, and if you cash this check I will understand it to be an agreement on your part that you will demand no more," B may cash the check and still demand, and secure by suit if necessary, the amount yet unpaid. But suppose there is a dispute or an honest difference of opinion as to the amount actually due; suppose B has done work for A without any express agreement as to wages, or has furnished him goods without any definite contract as to the price to be charged for them—then when B sends in his bill it merely represents his claim as to the amount due; when A sends his check, marking it "payment in full," that is his estimate. If B accepts the check and cashes it, in a case of that kind, he accepts A's estimate of the amount of the debt and he can claim no more.

10. A received a check from B. On his way to the bank to deposit it A lost the check, which he had not indorsed. B has requested the bank to stop it, but will not give a duplicate check. Has B a good defense in not issuing a duplicate?

A. No one, whether he is an innocent holder for value or not, can enforce payment of a check with a forged indorsement upon it. It is the duty of the bank, in this case, to refuse payment of the check, whatever the respective rights of the parties may be; if the bank pays the check the amount cannot be charged to the depositor's account. If the bank refuses payment, and the holder then calls upon the drawer to make the check good, the drawer has only to point to the forgery as his sufficient excuse for refusing. The only risk that the drawer would run if he were to issue a duplicate check is the risk that the first check might afterwards be presented by a *bona fide* holder for value and without any forged indorsement upon it; in that case he could be compelled to pay the first check, notwithstanding the fact that a duplicate has been issued.

11. Is it a criminal offense to give a check which is returned by the bank marked "Not sufficient funds"?

A. "A person who wilfully, with intent to defraud, by color or aid of a check or draft * * * when such person

knows that the drawer or maker thereof is not entitled to draw on the drawee for the sum specified therein, * * * although no express representation is made in reference thereto, obtains from another any money or property, is guilty of stealing the same and punishable accordingly." The check must be given with intent to defraud, and the giver must obtain from another money or property; this is the first fact to be proved. Then it must be shown beyond any reasonable doubt, that the accused knew he had no right to draw a check for that amount of money. If he never had a deposit in the bank on which the check was drawn this knowledge would follow as a matter of course. But if he had some money there, and if the check did not represent a very much larger sum, there might be a reasonable doubt as to his knowledge of the fact that the check was an overdraft.

12. 1. On Saturday, at 5 P.M., A gives a check for $100 as binding money in the purchase of property. On the same day he sees the same property offered in one place for $200 less and in another place for $500 less, both times to members of his own family. On Sunday a visit to the property convinces him of the unwisdom of said purchase. A having signed no contract to purchase, notifies B's (seller) agent that the deal is off at 8 A. M. Monday morning, and before 9 A. M. the seller is notified that payment is stopped on the check through the agent with whom alone the purchaser has had dealings. Is A liable for the amount of the check if deposited by B, in the meantime having passed from B to his wife and been returned to him for deposit, or deposited by B's wife?

2. Does not the fact that the agent consented to a cancellation of the check clear A of liability?

A. 1. We are not informed whether the property about to be purchased in this case was real or personal property. If it was real property the contract was not binding, even though part of the purchase price had been paid in the form of a check. The fact that there was no written evidence of the contract is sufficient to vitiate it, and the buyer may revoke his check and repudiate the contract altogether. If the negotiation was about personal property the buyer is bound. It is the duty of the bank, even in that case, to refuse payment of his check after he has revoked it, but the seller can compel him to pay the amount in some other form, and also

to pay the remainder of the purchase price. The drawer of the check may be compelled to pay it, in any case, if it was negotiable in form, and if the wife of B took it from B for full value, in the ordinary course of business, with no knowledge of the facts attending its issue; in any other case she cannot enforce it.

2. The agent of B may or may not have been authorized to release A from his obligation to B; that is a matter to be established by evidence. He had no authority, however, to release A from his obligation to any innocent holder who may have taken the check for value, as described above.

13. What is the rule in business regarding checks which have not been presented to the bank for payment, as shown by the statement, month by month, for years?

A. A check is an order for immediate payment, and when a check some months old is presented to a bank the latter should be put upon inquiry to determine whether the debt might not have been paid in some other form. Subject to this rule of caution, however, the bank is justified in paying the check at any time before the statute of limitations has run against it. The check is not revoked by lapse of time, within the statutory period, but the fact that it has been long outstanding will justify the bank in making inquiries before payment. The drawer of the check is under no legal compulsion to keep money in the bank to pay it after so long a time has elapsed as to make it unlikely that the check will ever be presented for payment. He is still liable for the debt, if the check was issued in payment of a debt, until the statutory period has elapsed. He is liable upon the check for the same length of time. That is, if the check is presented before suit is barred by the statute of limitations, and payment is refused, the check holder may sue upon the check itself, or, if the check was given to him in payment of a debt due from the depositor, he may ignore the check and sue upon the original cause of action.

14. H claims that a bank teller pays checks by referring to the figures cut in the check by a device for that purpose. He also claims that if the teller pays a check written in the body of the same for

three thousand dollars when the figures cut were $2,000—the drawer of the check meaning to pay $2,000—the bank would be held for the difference. C claims that the words in the body of the check prevail.

A. A check is a complete document without any figures upon the margin at all. If there are figures on the margin they are placed there merely for convenience and as an index of the amount for which the check was drawn. Accordingly, if the marginal figures differ from the written words expressing the amount, the bank should follow the words and not the figures. This principle the courts have carried to such an extent that they hold it permissible for any holder of a check having marginal figures which do not correspond to the words in the body expressing the amount, simply to alter the marginal figures, if this can readily be done, so that they shall correspond. When this has been done without the knowledge or consent of the drawer it has been held to be not only not a forgery but not even a material alteration of the paper as between the parties.

15. Suppose an account has been settled by check, and the check has been protested for non-payment, how would the Bankruptcy law bear on this, the claim being for an unpaid check and not for merchandise?

A. A check is only provisional payment until it is itself paid. If an insolvent, within four months of his formal bankruptcy, issues a check to one of his creditors, and the check is not paid by the bank, this does not constitute payment by the bankrupt within the meaning of that section of the law which forbids the making of preferential payments to any creditor. The holder of the check may deliver it up and present his former claim as if no check had been issued.

16. If the amount which appears in the body of a check does not agree with that written in figures on the margin, or if something is omitted from the wording upon the face of the check so that it does not show whether it was drawn for a certain number of hundreds or of thousands of dollars, has the holder a right to demand payment by the figures on the margin?

A. When the words in the body of a check and the

figures in the margin represent different amounts, the words must control and the figures be disregarded. But where there is any ambiguity in the wording or any omission so that the words taken literally do not clearly express any amount, then the figures in the margin may be appealed to to clear up the doubt. The intention of the parties having been ascertained in this way, the holder has implied authority to insert the amount in the body of the check.

17. Makers of checks and drafts frequently add the words, "With exchange on New York," "In exchange on New York," and "With the current rate of exchange on New York." What may the collecting bank demand and collect in each of these?

A. A draft or note payable "in exchange on New York," is payable in a bankers' bill of exchange on New York City. The bill must be in good repute and such an one as a prudent man would purchase for his own remittance. If the bill offered is refused the evidence to show that it was or was not a reputable bill will determine whether it was a legal tender. A draft or note payable "in exchange on New York" or "with the current rate," &c., is payable in legal tender money to the amount of the face of the bill together with an added sum sufficient to represent the cost of obtaining a bill of exchange on New York.

18. A draft in the following form comes to us from a correspondent for collection and credit:

"ONE HUNDREDTH NATIONAL BANK, NEW YORK

Pay to the Order of J. S.

John Smith —— dollars.

$10.00. R. R. Cashier."

The figures $10 are also punched out in the upper corner, as usual. The drawee bank, of course, refused payment. The question arose whether the draft should be protested. It is contended that the figures ($10) are not an integral part of the draft, and therefore the drawee is not ordered by the drawer to pay any sum of money whatever, and consequently payment has not been "refused."

A. The holders, before they presented the draft to the bank for payment, should have written in the word "Ten" before the dollars. Where the date or the sum to be paid is

left blank it is lawful for any one in interest to fill it up with the proper reading.

19. A business friend called at our office and requested our check for $1,200 in exchange for his own, stating that it was good; that he had the money to his credit in bank, but that he wanted our check for a special deposit. The request is granted. Subsequently we learn that he (A) is financially embarrassed, and that he has no money to his credit in bank; whereupon we at once, successfully, stop payment of our check. The check of A was returned unpaid. Can, under the circumstances, the bank in which A deposited our check hold us responsible for the same?

A. Our correspondents are liable to any *bona fide* holder of their check for value. If the bank placed the check to A's credit and he drew against the credit, the bank has a valid claim on the drawer. If A's representations can be shown to be untrue, and our correspondents gave their check solely on the strength of such false representations, he can be punished as a criminal.

20. A, owing B an account, knows that B will not sell him more goods until the old account is settled. He therefore tenders B check in part payment of old account and gets more goods. After A gets the goods he asks B to hold the check. Does A commit a criminal offense by tendering B the check, thereby representing to B that he has funds in the bank to meet the check, when he knows he has not, or is it an offense only when a party gives a check on a bank in which he has never had an account?

A. To bring the man within the criminal statute he must obtain something of value by false representations. If A told B that he had money in the bank to meet the check, and that he would give him this in payment on condition of his selling him more goods, he could be punished. But he was probably too sharp for that. He tendered the check without positive statements as to his bank accounts and then bought the goods on his renewed credit, thus escaping the penalty of the law.

21. The inclosed is form of a check with sundry indorsements. The last party to whom it is made payable (J & Co.) do not indorse, but the holder (some other party) presents the check and asks payment on the identification of the first indorser, J & Co. Would the bank be justifiable in paying without J & Co.'s indorsement?

A. J & Co. having indorsed in blank the paper is then payable. If fifty people write underneath "Pay Peter Brown," or "Dennis McLaughlin," and one indorses it over to another, the drawee (bank) need take no notice of them. If J & Co. order the bank to "Pay George Jenkins & Co.," then the bank must have the latter's indorsement. But when J & Co. indorse in blank, the bank need take no notice of any names written underneath. The check is payable to whoever presents it.

22. Will you please inform me whether the payment of a check can be stopped under either of the following circumstances: 1. The drawer of the check has it certified and then delivers it. 2. The party who receives it goes to the bank and gets it certified. 3. It passes into the possession of third or fourth parties after certification.

A. After a check has been certified, whether it was presented for certification by the drawer or drawee, will make no difference, the bank is holden for its payment, and the drawer cannot countermand it. When a check is certified it is charged to the drawer's account, and he has no further control of the question of payment.

23. B gave J a check payable to order on the F N Bank for a yoke of oxen; the next day he found the oxen were mortgaged and he stopped the payment at the bank of the check. Suppose J gets the check cashed at the S N Bank, what redress would the S N Bank have on B? J is supposed to be bankrupt.

A. The check is good in the hands of the S N Bank, and B can be held for it. The maker of a check may stop its payment, but he is liable for its face to an innocent holder who has given value for it, if properly indorsed.

24. A check dated fifteen days ahead is given to a firm in payment for merchandise bought, with the understanding that same is not to be deposited until the date. But the check is deposited the day it is received; is cashed by the bank without noticing the date; and other checks returned to parties to whom they are given marked: "Lack of funds." Is not the bank liable for cashing the check previous to the date on the check?

A. A post-dated check before the day of its date arrives is not an order on the bank which the latter is bound to obey, or which it is at liberty to obey, save at its own peril.

When the date arrives the bank may pay the check or certify it; before that time, however, it should be treated as non-existent. If the depositor calls for the whole of his deposit before the post-dated check is due he can compel the bank to deliver it to him, notwithstanding its payment of the check, which was premature; if the depositor revokes his post-dated check between its issue and the day of its date the revocation is made in good time and is valid; if other checks are presented before the date of the post-dated check arrives, and the depositor has money enough in the bank to pay them, making no deduction for the amount already advanced on the post-dated check, it is the duty of the bank to pay these checks promptly, whether it has previously paid the post-dated check or not. It is to be noted, however, that the holders of these latter checks, in such a case as our correspondent puts, have no legal ground of complaint against the bank. Here the depositor must settle with the bank. If the bank's refusal to pay one of his checks causes him any loss or damage, because of a suit brought against him, or otherwise, he may look to the bank for redress; but the bank owes no duty to the check-holder in any case, unless it has certified the check and so made itself a party to it.

25. The teller in another bank in this city presents a check drawn on this bank; the drawer has no funds, and the check is refused. The cashier of the bank that presented through its teller, is a notary, and protests without other demand than that made by the teller. Can a notary make legal protest by such a demand through any other person?

A. It has been decided "that the presentment and demand must be made by the same notary who protests the bill; it cannot be done by a clerk, or by any other person as his agent, though he be also a notary." This rule applies to all cases where a protest is required, as in foreign bills. But a check refused for lack of funds need not be protested to hold all the antecedent parties; and a "notice" of non-payment would serve all the purposes of a protest. Such notice may be given by any one having knowledge of the facts, and thus the course pursued in the case above cited

may answer all the purpose of a protest, without being within the legal requirements of an authorized notarial certificate.

26. The checks of the National Bank have lately been stamped on their face with a little rubber stamp: United States Depositary (*sic*). Is this a correct use of the word? or is there an individual in the bank who is responsible for United States deposits?

A. The stamp is right. A depository is a place where things are deposited. A depositary is the person or bailee with whom the deposit is made. A warehouse is a depository, and the responsible storekeeper or warehouseman is the depositary. This is in accordance with the National Banking Act, section 5,153: "All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money."

27. A gives, in the forenoon of Saturday, a check in payment of a purchase which proves satisfactory, and prior to the opening of the bank for business on the following Monday issues instructions to "stop payment." In the interim, the payee has the check certified, after 12 o'clock on Saturday. Assuming A's contention to be correct, can he legally stop payment? Is a certification made after the advertised hour of closing on any other day legal?

A. We cannot find that any court has ever been called upon to decide this question, and what we have to say about it is to be taken simply as our unsupported opinion. The mere fact that the check was certified, or even paid, after noon on a Saturday would probably not give the depositor any legal ground of complaint. He would be required, we think, to go further than that and to show that his loss arose out of that fact. He would be called upon to show that he had suffered a loss, of course—that the check was given for an amount which he was not legally bound to pay and which he could have saved except for the action of the bank. He would probably be called upon to prove also that this loss was in some way connected with the special time at which the certification was made. The bank was, of course, at liberty to certify it before 12 o'clock, and if it had done so, the depositor would have had no cause of complaint; if

he issued the check at such a late hour on Saturday morning that it could not be taken to the bank before 12, intending, at the time, to examine his accounts afterwards and revoke the check if he found he was justified in so doing; or if the thought of revoking it came to him after he had issued it and before it was certified, but at such a time that he felt safe in putting off the revocation until Monday, and at such a time that this would have been safe except for the bank's neglect to observe its usual rules,—in either of these cases the bank could probably be held. The bank's opening and closing hours are fixed and well known. A part of its implied agreement with the depositor is that this usage will continue until there is reasonable notice of a change. It is not bound to pay, or to certify a check after noon on Saturday; if it refuses to do so neither the depositor nor the check-holder has any cause of complaint. There is an implied agreement that it will pay the depositor's checks up to 12 o'clock of Saturday, but not later. The depositor is entitled to rely upon this implied agreement; and if the bank pays out his money on a Saturday afternoon and thereby causes a loss to him which he can prove that he would have avoided if the bank had followed its usual custom, the depositor ought to have a valid claim against it.

28. Please give the latest decision, as to whom the loss falls on when a bank pays a check that has been raised?

A. We do not find that any recent decisions have changed the law as it has long stood with reference to the loss arising from the payment of a raised check. The conditions under which such checks are drawn and raised and paid vary so widely that no general rule can be adopted, or ever has been adopted, placing the loss always upon any one of the parties concerned. The loss is to be borne either by the depositor or the bank or the person to whom the money has been paid; and cases may easily be found placing the loss on any one of three according to the circumstances. The loss rarely falls on the depositor, but there are cases in which it does so fall. If he has drawn his check so carelessly that it can be easily altered, and if alterations

are made in the manner so left open by his negligence, he must bear the loss. If the depositor by word or act leads the bank to suppose that the check as it reaches the bank is in the form in which he drew it, then the loss is his. Finally, it is held in some jurisdictions, but not in a majority, nor in New York, that the depositor is bound to examine his passbook and paid checks with care promptly after they are returned to him, and is bound to discover and report any raised check that may be found among those returned; that after a reasonable time for such examination the presumption arises that all of the checks were properly paid, and that thereafter he cannot hold the bank liable on any raised check it may have paid unless he is able to prove that the bank itself might have discovered the forgery by the exercise of reasonable care and skill when the check was presented. In some cases the person to whom the money has been paid can be compelled to return it; this is always true in any case in which he has had part in the forgery or has had knowledge of it, or has taken the paper under very suspicious circumstances. It is also true, where he has come into possession of the raised check innocently and without any fault or negligence on his part, if he can return the money to the bank without making his situation any worse than it would have been if the bank had refused to pay the check in the first place; that is, the bank may recover the money, as an amount paid under mistake, if the payee has not given up any goods, or surrendered any security or advantage, or done anything, after payment of the check, which he would not have done if payment had been refused. In all other cases except those here set forth payment of a raised check is the loss of the bank.

29. A gives a check payable to the order of B; B indorses same and pays C; C presents same for payment and although certified correct and the signature of indorser B acknowledged by teller, he refuses payment to C, who is not known to him. Can C sue bank and recover?

A. There is no contract between the bank and the indorsee as to the payment in violation of which a suit can be brought against the drawee. The holder's only remedy

is to protest the check for non-payment and sue the drawer, who must make the check good and pay all expenses of protest. The drawer, if he had the money to his credit, has then a claim on the bank, because the institution has violated its covenant with him. C is under no legal obligation to identify himself; but as it is for the common safety that all payees of checks and drafts should be identified, he ought in courtesy and equity to take all needful steps to make himself known. His neglect or refusal to do this will prevent his recovering from the drawer of the check more than nominal damages for the refusal of the bank to pay him. We must also add that many bank tellers are needlessly offensive in demanding the identification of the payee as if they had a legal right to refuse payment without it, when the fact is they have no such legal right, and should only ask it as a courtesy, doing all they can themselves to assist the holder in this unpleasant duty of proving that he is the person he declares himself to be.

30. A New York bank declined paying a check indorsed W S by R Y, attorney, without a guaranty. I claim the indorsement of Y as attorney was no irregularity, and that the bank offering the draft for payment was bound as to validity of power of Y. They say that they were bound to exact guaranty or know correctness of power of attorney.

A. The indorser of a check vouches for and guarantees not only the genuineness, but the sufficiency of all previous indorsements. Many banks in this city and elsewhere wantonly and with no excuse make no little trouble by endeavoring to exact a special guaranty in all such cases as that described above. Unless the collecting bank is doubted, no further assurance concerning the power of attorney is needed, and if it is doubted, of what use is any further guaranty of it by that bank?

CITIZENSHIP.

(See also Naturalization.)

1. An American citizen having an agent in a North African country desires that he should be recognized as such by the United

States Consul, and therefore protected by the latter the same as an American citizen. If so, where should an application for this purpose be made and what statement or proofs are required to obtain such protection? Also, please state whether an alien to the United States can have the privilege of having such agent or agents under the protection of the United States flag.

A. In any Christian country no person who is not a citizen of the United States is entitled to any protection by United States consuls. In any non-Christian country the alien agent of an American citizen, or of another alien domiciled in the United States and engaged in trade in such non-Christian country, would be entitled to be protected by the United States consul upon application to the consul, supported by proof satisfactory to the consul that the person applying for protection represented an American trader, or one domiciled in the United States.

2. Can you inform me as to the exact meaning of the term "citizenship" when applied to a foreigner? I notice in looking over an article on the inequalities of suffrage that twenty-one States require citizenship while seventeen do not. Also, do the four new States require citizenship?

A. No foreigner can become a citizen of the United States until he has lived in this country five years and has been duly naturalized. If he is under 18 when he arrives here he may at the end of five years, he being then 21 or over, declare his intention and take out full papers on the same day. But if he is over 18 when he arrives, he must wait two years after his declaration before his papers are issued. Many of the States as above noted allow aliens to vote before they become citizens. The four new States will make their own laws on this subject after they have a State government.

3. Is a *bona fide* American citizen whose business compels his continued residence in a foreign country, and who retains no residence in the States, but who has never, aside from living abroad, done anything to prejudice his claim to American citizenship, debarred in any way from holding a United States ship and appearing on her register as such? Is there any legislation to compel foreigners who become naturalized to reside in the country—I mean especially mariners, whose service under the flag is considered by the courts as

equivalent to the required residence? Take the mate of my vessel's case, and there are many such. He obtains his papers in due form, but marries, makes his home, and if he has property pays taxes in Nova Scotia. He has the privileges of citizenship, but escapes its duties and obligations.

A. A naturalized American citizen, alien born, has a right to be recognized as such until he has renounced the citizenship. With some foreign countries we have a treaty which provides that a person emigrating from thence, and naturalized here, may be held to have renounced his American citizenship if he returns to reside in the land of his nativity after two years of such continued residence. But in the case described the Nova Scotian may still retain his acquired privileges, as the statute only requires officers of vessels to be citizens, and does not prescribe any conditions of residence. When it comes to the ownership of vessels the case is very different. The law forbids the registry or forfeits the right if the vessel is owned in whole or in part by any citizen of the United States who usually resides in a foreign country (unless he is a consul or a partner in trade of a house doing business here), or if it is owned in whole or in part by a naturalized citizen who has resided more than a year in the country of his origin, or more than two years in any other foreign country.

4. Please state how long a foreigner must be in the States before he is admitted to declare his intention to become a citizen of the United States? An assertion was made yesterday by a gentleman that he had been permitted to file his declaration four weeks after his arrival, but I cannot believe that this is correct.

A. An alien may declare his intention of becoming a citizen on the day he arrives in the country. He must wait five years before he can be naturalized, but as soon as he makes his declaration he can deal in real estate and has other privileges he would not enjoy without it. An alien who arrives here after he is 18 years of age must wait two years after his declaration before he can become a citizen, no matter how long he has been in the country before that time.

5. In some of the States aliens can vote after a residence of only

six months, or a year, or certainly less than five years. Can such persons vote for the Presidential electors? Or in other words, can it be possible that a man must reside five years in the State of New York or must otherwise be entitled to citizenship before he can vote for President, and in another State a man can vote for President without being a citizen of the United States according to the laws of the United States?

A. No one at the November election votes for a President of the United States. He simply votes for electors who are to choose a President. Such electors are State officers, and every State may prescribe the qualifications of those who shall exercise the elective franchise. In some States a man must be a citizen of the United States to vote for State officials. In other States he may be an alien who has declared his intention to become a citizen and has resided in the State six months or a year. There are no voters recognized by United States authority. Each State regulates this matter for itself.

6. Can a foreigner in possession of his "first papers," about ten years ago, be naturalized and take out his citizen's papers in the city to which he last removed?

A. The applicant may secure his final papers at any court of record of competent jurisdiction, within the State, provided he brings proof of the facts required.

7. We are informed that the laws of the United States admit to citizenship children of aliens if under twenty-one years of age at the time of the naturalization of parent. In the *World Almanac* it is stated that such children must be under sixteen. Please inform us which is correct. Reference is made in the *World Almanac* to the Revised Statutes, sections 2,165-74, to which we are not able here to refer.

A. Our attention has been called by many correspondents to the statement in the *World Almanac,* as in conflict with the decisions given by us. The act of Congress (section 2,172) reads: "The children of persons who have been duly naturalized under any law of the United States, or who previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the States, under the laws thereof, being

under the age of 21 years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof." This provision was in the law as passed in 1802, and has never been changed. The only question under it was whether the naturalization of one parent was sufficient, and this was decided in State v. Penney, 5 Eng., 621, as follows: "The naturalization of a father, *ipso facto,* makes his son then residing in the United States and under 21 years of age, a citizen."

CLEARING HOUSE.

(See also Banks.)

1. The X. Y. Z. Bank which makes a specialty of collecting out-of-town checks without charge has no clearing house connection, but deposits with bank No. 999 of the Clearing House Association. Has the Clearing House Association the power to compel member No. 999 to drop the account of the X. Y. Z. Bank?

2. Please define the general powers of the Clearing House Association.

A. 1. The Clearing House Association will not undertake to compel one of its members to drop the account of a non-associated bank which chooses to make a specialty of collecting out-of-town checks free of charge. It is to be remembered, however, that the rule under which the associated banks make a small charge for this service was adopted by them unanimously. Every one of these banks not only voted for the rule, when a vote had to be given one way or the other, but appended its signature to a document declaring that the bank was decidedly in favor of the charge. Under this state of facts it would not be at all surprising if the other associated banks should look with decided disfavor upon the course of No. 999, in a case of this kind, and consider it somewhat inequitable and unfair; but no action would be taken in the matter.

2. The general powers of the Clearing House Association are only such as are necessary to enable it to fulfill the purposes of its formation. The association's own articles of incorporation make this explanation concerning its objects:

"The objects of the association shall be the effecting at one place of the daily exchanges between the several associated banks, and the payment at the same place of the balances resulting from such exchanges. But the association shall be in no wise responsible in regard to such exchanges, nor in regard to the balances resulting therefrom, except so far as such balances shall be actually paid into the hands of the manager. The responsibility of the association is strictly limited to the faithful distribution by the manager among the creditor banks, for the time being, of the sums actually received by him; and should any loss occur whilst the said balances are in the custody of the manager, they shall be borne and paid by the associated banks in the same proportion as the other expenses of the clearing house as hereinafter provided for."

COLLATERALS.

(See also Notes, Sales and Loans.)

1. Can a note secured by collaterals, payable on a specified day, be paid sooner, without the consent of the payee?

A. It makes no difference how the note is secured, "payment can only be made before maturity by consent of both debtor and creditor." Ebersole v. Redding, 22 Ind., 232, Daniel on Neg. Ins., vol. 2, page 233.

2. 1. A loans B a stated sum of money for the purchase of farm stock. B gives A demand notes for the amount and as security a bill of sale covering the purchased stock and also other stock that he previously owned. Now, in the event of B's failure to pay these notes and the stock is taken on the bill of sale, but does not realize the full amount of the notes, is B liable for the balance? If a chattel mortgage had been given (without a bond) would not the responsibility on the notes terminate on the foreclosure of the mortgage?

2. In transactions of this character, which is considered the better security?

A. 1. If B gives to A notes for money borrowed A can enforce payment of the notes whether there is any collateral to secure the debt or not. If the notes are secured by a pledge, or by a mortgage, chattel or real, he may enforce the lien first and then sue upon the notes for the amount still

due, if any. But he is not bound to do this; he may ignore the collateral, if he will, and sue upon the note in the first instance. The creditor has the same right to sue that any other creditor has; but he has additional security, which he may enforce either before or after suit. A debtor may give a bill of sale, or a chattel mortgage unaccompanied by a bond, in such form that the creditor has no personal claim against him at all, nothing to which to look except the goods covered by the mortgage or bill of sale; if those goods do not realize the full amount of his claim he must lose the difference. But if one or more notes are given they can be enforced just as a bond could be.

2. There is no material difference, as to the value or validity of the security, between a chattel mortgage and a defeasible bill of sale of the same goods. The rule is that in cases of doubt the instrument is to be construed as a mortgage.

3. About sixty days ago we loaned a person a sum of money to be paid in thirty days and as security for same he deposited with us a note given by a third person. Now the thirty days have passed and he has failed to pay the amount advanced him, though we have called his attention to it. Please tell us if the note he deposited as security with us is not our property.

A. Collaterals given as security for the payment of money cannot be appropriated by the lender as his own property, if the loan is not repaid, unless there is some contract to that effect. The better way, where no provision has been made, is to sue and get judgment for the original debt, and apply the execution to the collateral in the ordinary way. Loans upon collaterals here are made with a special contract providing for the realization of the money from the security if the debtor defaults in his payment.

COLLECTION AGENCIES.

1. I turned a claim over to a collection agency, but before they had done anything at all towards making a collection, or even towards informing the debtor that they held the claim, he came in and paid part of it and made satisfactory arrangements as to the

remainder. Now the collection agency claims its commissions as if it had been instrumental in making the collection.

A. If a contract with a collection agency is drawn in such form that the collection of a debt is put wholly into its hands then it is entitled to a commission on any payment that is made and accepted, whether the agency itself has anything to do with securing the collection or not. If the contract is such that the agency is to have commissions only on its actual collections it is not entitled to any remuneration in a case of this kind, where payment was made without any intervention of the agency. The burden is upon the collection agency to show that it had a sole and exclusive agency in the matter of that particular collection, so that it was entitled to the commission whether it did the work or not.

COLLECTIONS.

1. Beginning in November and continuing until January, A loaned B a certain sum of money each month. B was to repay this as soon as possible. B is now in receipt of a good salary, but refuses to pay as much as A believes he can pay. Can A sue and attach the salary of B, in whole or in part, and what would the judgment cost?

A. If B has borrowed money from A, and has not repaid it in accordance with his agreement, express or implied, A is entitled to a judgment against him. Under the judgment he may have an execution issued and may attach any of the judgment debtor's personal property, or any debts owing to him, except in so far as these may be exempt. Among exemptions are included "the earnings of the judgment debtor for his personal services rendered within sixty days next before the commencement of the action, where it is made to appear, by his oath or otherwise, that those earnings are necessary for the use of a family wholly or partly supported by his labor." Where the indebtedness has arisen out of certain accounts (but not when it is for money loaned) the judgment creditor may take a larger proportion of the debtor's wages under execution. The expense of obtaining a judgment varies considerably with the nature of the indebtedness, the difficulty of establishing its existence, the

length of the trial, the identity of the lawyer conducting it and other similar considerations. The counsel who must be employed or consulted in the matter can tell approximately what the expense will be when he has all the facts before him.

2. As a newspaper publisher I believe that I have enough evidence to show that a large turf concern which solicited investments and has since failed, and is making false reports to its investors to keep them from going to law to recover their money, did a fraudulent business. Please advise me if I can safely apply to these investors for assignments of their claims to prosecute the same as well as apply for $10 to defray initiatory expense—not promising that anything will be forthcoming except what might result from my efforts—and demand a percentage of the money recovered as recompense for legal services and other matters involved. Would I make myself liable to these investors in any way?

A. If one person knows of a claim due to another, and the other is in ignorance of it, there is no legal reason why the former should not undertake to collect the claim in return for a percentage of the amount recovered and certain sums to pay necessary expenses. If the agreement is fairly made, nothing being concealed from the claimant which he has a right to know, and the expense money being only such as was actually needed and expended for necessary services in connection with the claim, the courts will uphold and enforce the contract.

COMMON CARRIERS.

1. A passenger on a railroad checked a suit case, and received the railroad company's check for it. The case never arrived at its destination. The owner put in a claim for $15, that being, in his mind, a fair estimate of the loss. In his claim, the passenger stated that he did not know the detailed contents of the case, but that it contained soiled linen, etc., and no outside garments. The railroad company writes as follows: "We must insist upon having an itemized list of the contents of the missing dress suit case, a list showing the price paid for each article, length of time in use, and your estimate of its value at the time of loss. Also an item showing the value of the dress suit case itself." Inasmuch as the passenger cannot comply with this, does he forfeit his claim?

A. The railroad company is asking for rather more than it is strictly entitled to have, in this case, but it clearly

has a right to demand some particulars. When a case of this kind is taken into court the evidence of the owner of the goods is accepted with more or less reluctance, and only because no other evidence is available. He is not allowed to testify as to the value of the articles lost. He is asked to state what they were, as nearly as he can remember; what they cost when new, approximately at least; how long he has had them, and to what extent they have been used. From these facts the jury is left to determine the value of the articles at the time of the loss. It is necessary to tell what the articles were in the first place, because there are many articles carried about by travelers which are not baggage at all and for which the carrier is not responsible if they are sent as baggage and are lost. Besides, neither the court nor the jury will believe that the owner can tell what his property was worth if he is not able to say, approximately at least, of what articles it consisted and to what extent they had been used. The carrier is not in default for refusing to pay for the goods unless the owner is able and willing to furnish such information as the court would demand if suit were brought.

2. Can an auctioneer refuse to deliver goods on a buyer's order or verbal request to a cartman, and does he render himself liable by his refusal to a civil or criminal proceeding, as his action in refusing operates to prevent the aforesaid cartman from making a living to a certain extent.

A. If the auctioneer in his terms of sale reserves the right to deliver the goods, the buyer cannot demand the property through his own messenger. If no limitations as to delivery were made in the terms of sale, the buyer has the right to send his own carman for the goods tendering a settlement for the same, and a refusal to deliver upon such a demand and tender would render the auctioneer liable, in a civil suit, for the damage caused by such refusal.

3. Can a railroad company compel a passenger to tender the exact amount of his fare, or are they obliged to make change to the amount of two dollars? Please let me know the law in regard to the above.

A. No carrier is required to make change. The condition of demanding the service of a railroad is a tender of the proper compensation, and the passenger must do this at his own peril. If a passenger was to tender a small bill, say one dollar, or a less sum in silver, and was put off for want of the exact change, the courts would probably rule that it was an unreasonable ejection, and that if the line could not supply one dollar (possibly they might say two dollars, but this is not so certain) in change, they might have carried the passenger free. But the offer of a five or ten dollar bill would not bring the carrier under any such responsibility.

4. A receives an order for shipment to B "cash against bill of lading," who gives orders to C (a recognized forwarder) to ship for A's account. C has a printed form to be filled out with shipping instructions. A in filling this out writes "ship to order" of A on the line below the proper line, due to the proper line being required for the full name and address of B. B receives the goods, refuses to pay for them, and is now bankrupt. Is C liable to A for the amount?

A. Something will depend in this case upon the appearance of the shipping instructions after they were filled out by A. If they are in such form that one reading them with reasonable care would see that they called for delivery to the order of the shipper, then the mere fact that this statement appeared one line lower down than the form called for would not excuse the carrier. Each person must bear the burden of his own mistakes when they are such as to mislead a person in the exercise of ordinary care. But when shipping instructions are given to a carrier or forwarder he is expected to examine the document with considerable care, not merely to glance at it. The carrier or forwarder is bound to deliver the goods in accordance with a bill of lading following shipping instructions, and not otherwise. He is bound to use due care to ascertain the real meaning of the shipping instructions given to him. If it appears from an examination of the whole face of the form filled in by the shipper that his mistake was such as would naturally deceive one who inspected the document carefully, not neg-

ligently, the shipper has no redress. If the document, upon a careful reading, is seen to call for a bill of lading to order then the forwarder is liable for his failure to issue a bill of that kind.

5. A contracts with B, a cordage manufacturer, to deliver to the latter f. o. b. New York city a certain amount of kiln made pine tar in carload instalments. The first two cars are entirely satisfactory. A loads the third car with the same kind of goods, as evidenced by the inspector's certificate, each barrel being plainly marked. B receives the car, without noting the mark on the barrels, and dumps it into his tank and commences using it. He finds, however, that it is not like the previous lot, and refuses to pay for it. Investigation shows that there was substitution in transit, which error is traced to the agent of the steamship company, he having delivered to the connecting railroad company tar of an entirely different mark and different quality. There are indications that the tar actually delivered was what is known as "retort tar," which closely resembles the kiln made article in appearance, but is considered unfit for ropemakers' use. This retort tar is shipped in large quantities and in the same kind of package. Can I hold the transportation company for the full amount of the loss, or is the consignee guilty of contributory negligence? Where is the responsibility to be placed, and what recourse has the shipper on the consignee?

A. If a railroad company tenders the wrong goods to a consignee, the goods being plainly marked in such a way as to show that they are not those which the consignee is entitled to have, the consignee cannot accept those goods without protest, use them up and then, for the first time, object to the delivery. He has no claim against the road, he cannot refuse to pay the freight, if it is still due, and he is bound to pay the seller the price of the goods unless they were sold under an express warranty.

6. The question is whether railroads in the United States are liable for loss of, or damage to, goods given them for transportation while in their charge; what are the rules and regulations of the railroads in this respect, and whether they differ one from another. Further, whether there exists, perhaps, an obligatory insurance, charged for by high rates of freight, and whether any loss or damage is made good without difficulty at the full invoice value, or only to the extent of a certain portion thereof.

A. Railroads in the United States are liable for the safe

delivery of goods placed in their charge by steamship companies for delivery inland. Settlement is always made on the basis of the invoice price, unless there is a clause in the bill of lading relieving the company from a portion of this liability. Common carriers are allowed to limit their responsibility for the loss of goods entrusted to their care, provided they do so for a valid consideration, which is usually given in the shape of a lower rate of freight than that charged where the full liability is incurred. A railroad is always responsible for loss arising from the negligence of its employes.

7. Please advise us whom our action is against in the following case. We bought a car of grain at Buffalo, on one railroad. They made out a bill of lading and the car was to be delivered to Perth Amboy via another railroad. Through carelessness of the transportation company the car was left at Buffalo thirty days and it could have been delivered in Perth Amboy in four days, but it was thirty-five days altogether. When it arrived here the car of grain was totally spoiled, as it got heated and rotted. We refused the goods, but we paid the draft that was attached to the bill of lading when it was first presented. Our loss is $900. Which railway is our suit against? The bill of lading is issued by the first road. The grain was graded and certificates of grade given, and it must have been in excellent condition when it was billed to us.

A. The initial carrier is liable for these goods, whether their loss is directly traceable to its negligence or not, if that carrier in its bill of lading agreed to transport the goods to Perth Amboy and deliver them there; such an undertaking makes the initial carrier liable for the whole transportation, and any other carrier that may be employed is an agent of the initial carrier. That is simply the ordinary case of holding an employer liable for the damage done by his employe or agent. Bills of lading frequently provide, however, that the first carrier shall have the privilege of turning the goods over to another at some point along the route and that such first carrier shall not be held liable for any damage arising after this transfer shall have been made. The first point to be attended to is to see if the bill of lading contains a clause of this kind. If it does not the first carrier may be

sued in any case. If such a clause is found in the bill of lading steps should then be taken to ascertain which of the two carriers is liable for the delay, and suit should be brought against that one.

8. J ships five cars of oats to the order of M. & S. The railroad agent will not deliver without bill of lading. We claim they are not billed to shipper's order and he should deliver on our order. Also, if he delivers on our order can shipper make claim on the railroad for the goods? Shipper's name is not mentioned on billing of the railroad.

A. The undertaking of a carrier, in the absence of special instructions to the contrary, is to deliver goods to the consignee or his order. He is to regard the latter as absolute owner until the contrary appears. Accordingly, any delivery which discharges the carrier, as between him and the consignee, is good against the consignor. It is only where the person claiming the goods is not the consignee that the bill of lading should be demanded.

9. Will you please inform me whether, when I send a lighter to a steamer for goods and am unable to get a berth, legal wharfage can thereafter be charged on the goods while the boat is waiting to get at them; also whether the steamer's agents are obliged to provide facilities for boats going to their wharves for cargo, or can demand that the goods be removed, when discharged, by carting to some other pier on account of the crowded condition of their own.

A. The wharfage charge is legal, if the goods lie on the dock after their discharge. The steamers are not legally obliged to furnish facilities for their removal by lighter. They should do it as a matter of courtesy. The carrier is acquitted of his liability, if he lands the goods, after the consignee has had access to them to ascertain their condition, and a reasonable time in which to cart them away.

10. Please inform us whether in the event of a "c. o. d." package being burned up in the sheds of the express company at its destination, the express company is liable for the value of the package or not, the express company claiming that, as they notified the consignee of the arrival of the goods and she failed to remove the package, they are exempt from any claim whatever in the matter.

A. An express company, like other common carriers, is

held to the strictest liability for the care of goods entrusted to it. This being so the courts will not allow a consignee to leave his goods indefinitely in the care of the company, holding the latter meanwhile to its strict common law liability. Accordingly, when an express company accepts a package marked "c. o. d.," it becomes its duty to carry it safely to its destination and to deliver or attempt to deliver it to the consignee. If the latter refuses or neglects to pay the charges and receive the goods within a reasonable time, the company may hold them in the capacity of warehousemen, being responsible for their loss only in the case of negligence.

11. I shipped by railroad material liable to breakage and the company stamped the receipt "owner's risk of breakage." The material (fire brick tiles) was in excellent condition, but the company in loading it into their car did not put anything between them, straw, hay or other soft material, and part of the shipment was received in very bad order by the consignee and perfectly useless for the purpose for which the material was designed. Can our consignee hold them accountable for the damage?

A. The stipulation in the bill of lading will release the carriers from all liability for damage unless it can be shown that there was gross carelessness in handling the property. It has been decided that the carrier cannot protect himself by contract against the damage he may do to the property by his own want of proper care, or the recklessness of his servants. But the owner must show that the freight was imperfectly stowed or handled.

12. Can a railroad company legally limit the time of an excursion ticket?

A. Both in law and equity a railroad may limit the time during which a ticket remains good.

13. In receiving a quantity of tea from a steamer the dock clerk delivered our carman a wrong mark, taking "full receipts." The steamer's agents refuse to rectify the mistake by paying for the missing package and taking away the wrong mark. Have they any right to do this and is it honorable?

A. A mistake of this kind, if discovered in season, must

be rectified. The carrier is not only bound in honor, but he can be compelled by law to deliver the proper package or to pay for it. A receipt, no matter how strongly worded, is no barrier to the fulfillment of the obligation.

14. I shipped two carloads of household effects about two or three weeks ago via A., T. and S. to Colorado Springs. I arranged with the A., T. and S., which issued bill of lading and to which I paid $223 per car, or $1.11½ per cwt. on 20,000 pounds. They write on their bill of lading "Insured for $5 per cwt." I received word yesterday from Colorado that one of the cars was burned somewhere in Kansas while in transit, and all is lost. Can I recover full value of goods, or only at the rate of $5 per cwt., viz., $1,000?

A. Common carriers are allowed to limit, by special agreement, their common law liability for the loss of goods intrusted to them. The limitation must be reasonable and must be made for a consideration. The burden is upon the carrier to show that notice of the limitation of liability was given, either actually or constructively to the shipper. The Western classification, under which goods are carried to Colorado points, provides that "household goods, not in boxes or barrels, released to a valuation of $5 per 100 pounds in case of total loss," shall be carried at a certain rate, and that the "same, when no valuation is specified," shall pay one and a half times that rate. The "released valuation" rate on goods shipped to Colorado Springs is that paid by our correspondent, $1.11½ per cwt. He received a consideration, therefore, for releasing the company from full liability. If the company keeps its rates and classifications conspicuously posted, as required by the Interstate Commerce law, this would be constructive notice to the shipper.

15. In the case of a short delivery of merchandise from a foreign country where there are no stipulations in bill of lading to provide for it, can the consignee collect from the carriers on a basis of cost at port of shipment, or of value at destination?

A. The fair measure of damage is the sum it would cost the consignee to replace the missing goods, and thus to put himself in the same financial position as if the contract had been fulfilled.

16. We hold bill of lading for 250 tierces lard shipped from Chicago to New York to "order." The bill of lading states, however, that the railroad shall notify us of arrival. We have never received such notification, but learned from others that our lot of lard, which had a special mark as inserted in the bill of lading, was delivered to somebody else by mistake of the railroad. After calling the attention of the railroad to this and protesting, we demanded of them to pay the invoice at our purchasing price, viz.: pay to us the draft we had paid for this lot of lard. The railroad tries, however, to substitute another lot of lard, which we refuse. Are we correct in insisting upon our special lot as per bill of lading or upon payment of original invoice amount, disregarding any decline in the market value, or what are our claims against the railroad, and how can we best enforce them?

A. The carrier has no right to substitute any other lot of goods for those he has undertaken to deliver. Failing to execute the contract he can be made to pay whatever damages have been caused by his neglect. If title to delivery in the bill of lading has been transferred to our correspondents by the indorsement of the shipper, then they can sue for the value of the goods in this market at the date when they should have received them.

17. We operate mills and have grain shipped in. We made arrangements with shippers to ship a certain quantity of grain every week and we have tried to have the cars of grain come in just as we needed them, but this winter has been such a severe one that we could not grind the grain as fast as we had anticipated, and as we had very little storage room in our buildings cars began accumulating on the switch at our station. Now this switch is situated in such a manner that only two cars can be placed in a position to be unloaded at one time, and therefore we were charged $1 a day demurrage. We had three and four cars on the switch at one time, but the railroad agent here said that demurrage was only charged when a car was placed, and as we could not drive up to unload the other cars they were not called "placed" and therefore we were not to pay demurrage on them. Certain questions growing out of the matter were referred to the Car Service Association. This association said that the demurrage would be charged until the car was unloaded no matter if it was pushed out of a position to be unloaded. We told these representatives that we had never heard of such a thing and therefore wished them to show us where that clause was in their books of rules and regulations and this is the clause they alluded to: "When cars are delayed after arrival beyond the time allowed by rule

on account of failure of shipper or consignee to give prompt notice of disposition, the time so consumed shall be considered a part of the forty-eight hours allowed for unloading." Do you think that that covers their claim that a bill of lading must be shown? Can the Car Service Association levy on or in any way stop us from unloading a car if we pay the railroad company their bill? Can they charge us demurrage for cars when they have not the room to place them?

A. Railroad companies are allowed, by a regulation brought to the notice of the shipper or consignee, to make a reasonable charge in the nature of demurrage for the detention of cars by unreasonable delay. In the case our correspondent puts there is clearly nothing in the clause he quotes, nor in any fact stated by him, which would authorize the carrier to demand a bill of lading and to base its decision as to demurrage charges upon that. There may be a reasonable rule of the carrier, however, under which this course may be sanctioned, and if a bill of lading has been issued there is no reason why the consignee should not produce it. The Car Service Association cannot stop our correspondents from unloading the cars, nor interfere with them in any way, so long as the charges of the railroad company are paid. Demurrage cannot be charged upon any car which the company has not placed in such a situation that the consignee could unload it if he chose to do so. The only state of facts upon which such a liability can rest is this: That the carrier has done its full duty in the matter, has placed the cars containing the merchandise in such a situation that the consignee can take his goods from them if he chooses to do so, but that the consignee unreasonably refuses or fails to take his goods from the cars; the result is that the company's cars are kept from doing other work for it during a longer time than was contemplated when the contract was made.

18. Is a transportation company responsible to a shipper or his agent here for a reasonable charge for storage, labor and cartage or any other charge following goods stored by them for any cause? To illustrate by actual facts: On December 14 we received from a railroad company notice of arrival of 34 barrels of dried apples consigned to us. On the 18th we sent our cartman with the bill of

lading to get these goods (one day too late, as the railroad company give only three days' free storage), and found that the cartman from a storage warehouse had five barrels of them on his truck, and when he demanded the others was told he could not have them. When we sent a demand for the goods the only satisfaction we got was a storage receipt dated December 18, headed:

——— R. R. Co.
Received on storage in store, —— West st.
Subject to order of ——, agent, Pier ——,
N. R., 34 barrels dried apples.
Freight charges.....Paid
Cartage $3 00
Storage per month.....15c ea.
Labor in and out.....15c ea.
Signed, ———.

Now, this is a document very familiar to many of your readers who have had goods stored by this railroad company. We wrote first to the agent of the company demanding a reduction in this rate, as 4c to 5c is the usual storage rate, and he made no reply. We then called on him, and he finally refused any redress, claiming that the railroad company had nothing to do with the rate. We claim that the railroad company have no right to allow our goods to go into store where we shall be overcharged, that it is their duty to see that we are not overcharged, and we leave the question to you.

A. When a carrier has given a consignee notice of the arrival of his goods, and has allowed him a reasonable time in which to remove them, the carrier is not bound to hold the goods longer upon its wharves or at its station without extra charge; it may store the goods in its own warehouse or in another and require the consignee to pay cartage and storage upon them. It does not seem to be questioned in this case that the carrier had held the goods as long as it was bound to hold them; three days' notice would seem to be sufficient in any ordinary case, and besides it seems that the consignee knew it to be a custom of this carrier to give notice of that kind. The three days having expired and the goods not called for, the road was justified in storing them. If there was no express agreement on the subject the warehouseman can collect only the usual rate, and he must show what that rate is. If the rate actually charged was agreed upon between the railroad and the warehouseman, the lat-

ter may be able to collect it; but in that case the railroad company itself must pay so much of the charge as is above the usual rate. Acting as agent of another, it was the duty of the company to secure a reasonable rate of storage; if it failed to do so it is liable, as any other agent is, for a loss caused by his own gross negligence. As soon as the goods were turned over to the cartman and arrangements had been made with the warehouseman to receive them, the warehouseman had a lien upon them to secure his charges. He was not bound to return them to the owner except upon payment of labor already done and storage for the shortest term for which goods are accepted. If payment of these charges was tendered the warehouseman should have given up the goods at once; if payment was not tendered he was justified in keeping the goods to secure whatever sum was justly due him. If the warehouseman knew, as he probably did, that the railroad was acting merely as agent of the real owner, and had no authority to agree upon exorbitant storage rates, then the owner of the goods cannot be compelled to pay such rates in the first place. If the warehouseman had any reasonable cause to suppose that the railroad was authorized to make the arrangement it did make, the warehouseman can collect the full amount from the owner of the goods; but in that case the carrier must make up to the owner that part of the charge which is above the normal rate.

19. I receive regularly by a certain steamship line a number of packages which in appearance are all alike, yet which contain different qualities, designated by numbers. For example, if I receive 50 packages, No. 1 to 20 might contain one quality, No. 21 to 40 another quality, and No. 41 to 50 a third quality. I issue delivery orders for the various lots, plainly stating the numbers, but find that the steamship company does not pay any attention to it, but simply shows the truckman where all the packages are, and leaves it to him to take what he likes. I have often had serious trouble and extra expense in consequence of wrong numbers having been delivered, and I would like to know with whom the responsibility rests for such mistakes.

A. A steamship company or other common carrier is not bound to make separate deliveries of goods carried on

one bill of lading and under one contract. The contract binds the carrier to transport and deliver the whole mass of goods as if it was one single article. The work of selection and separation might be considerable; but whether it is great or small, it is a work the carrier is not called upon to do. He is entitled to say: "By this contract I have agreed to carry and deliver to you certain goods. There they are." Then the carrier's duty is done. If the goods are carried under different bills of lading the carrier may be called upon to make as many separate deliveries; but the mere fact that "the various lots are separated on the bill of lading" is not sufficient to give the consignee a right to call for more than one delivery. The truckman is the consignee's agent, and he is the proper person to separate the packages.

20. Please inform me who the loser is in case of goods being burned up on a railroad while in transit and no carelessness can be proved against the railroad company. Does the loss fall on the consignee or the railroad company? Also, tell me if it is customary for large shippers to insure goods while in transit.

A. The common law of liability of common carriers extends to all damage and loss of goods during the carriage, from whatever cause it may have arisen unless it was caused by an act of the public enemy or by an act of God, or inevitable accident. This latter exception, of inevitable accident, has been restricted by the courts to such narrow limits as to afford very little relief to common carriers. It is in fact limited to accidents arising from a force which human agency could neither originate nor resist. Carriers are accordingly held as insurers against fire except such as is caused by lightning. Railroads and other carriers are, however, allowed to limit their common law liability by express contract for a valuable consideration. The consideration usually consists in allowing the shipper a lower rate than that which is charged in cases where the company assumes its common law liability. It is not customary for large shippers to insure goods in transit where the transportation is wholly by land.

21. In case a warehouseman with whom we store various goods delivers to our truckman on our order goods from a lot other than that called for by the order, can he in law and equity be held accountable for the expense caused by this mistake; or, is there any responsibility to be attached to the truckman, he being employed by the job, and not by the week or month?

A. If the truckman does not assist in the selection or aid in any way to effect the erroneous delivery, the responsibility rests wholly upon the warehouse, and the warehouse owner must bear the loss.

22. A railroad over which we are under the necessity of shipping charges us more per pound freight than another firm who are competitors of ours, but who are larger shippers. The company offers to place us on the same basis if we will ship an equal amount of freight. Under the Interstate Commerce law have they the right thus to discriminate against us for the reason that we are smaller shippers? If not, what course should we pursue in order to secure lawful treatment?

A. It has been said that a man who ships a whole car-load ought to have his freight cheaper than one who ships only a part of a car-load, especially where the merchandise sent cannot be mixed with other goods. But in general all discriminations of this character are unjust, and the Interstate Commissioners, if appealed to, will afford the proper remedy.

23. Are railroads in the United States liable for loss of, or damage to, goods given them for transportation while in their charge? What are the rules and regulations of the railroads in this respect? and whether they differ one from another. Further, whether there exists, perhaps, an obligatory insurance, charged for by high rates of freight, and whether any loss or damage is made good without difficulty at the full invoice value, or only to the extent of a certain portion thereof.

A. Railroads in the United States are liable for the safe delivery of goods placed in their charge by steamship companies for delivery inland. Settlement is always made on the basis of the invoice price, unless there is a clause in the bill of lading relieving the company from a portion of this liability. Common carriers are allowed to limit their responsibility for the loss of goods intrusted to their care, provided

they do so for a valid consideration, which is usually given in the shape of a lower rate of freight than that charged where the full liability is incurred. A railroad is always responsible for loss arising from the negligence of its employes.

24. E. & Co., as ship brokers, load a vessel at port of New York with an assorted cargo of non-contagious merchandise, and vessel arrives at port of destination in West Indies safely. During the voyage yellow fever breaks out at port of destination and on arrival vessel is quarantined, and cargo has to be discharged in lighters instead of doing so alongside of wharf. Bills of lading stipulate as follows: "To be delivered in like order at the port of —, with stamped clause as follows—'Goods to be received by consignees immediately on arrival, within reach of ship's tackles, &c.'" Now, in case vessel on arrival at destination is compelled to discharge cargo in lighters to shore, can owners of vessel be held responsible for charges of lighterage in landing cargo to shore? Or can consignees of goods legally deduct expense of lighterage from amount of freight due as per bills of lading?

A. It is the duty of a carrier to deliver goods where he has agreed to deliver them, and he is not entitled to freight unless delivery at that place is either made or prevented from being made by the act or fault of the shipper or consignee. But a usage to receive goods at the quarantine ground, if such usage exists, is admissible as showing a compliance with the engagement to deliver at the port.

25. A ships a case by a local express to B; B refuses to accept the goods and the case remains in the express company's hands sixty days, they not notifying A that the goods were refused. When A tries to collect money from B he is told that the goods were refused. The express company claims the reason they did not return the case or notify A that the goods were refused is because A neglected to mark the shipper's name on the case, so that the express company did not know where to return the goods, or whom to notify. A, being a regular customer of the express company, shipping goods daily, claims that the express company should have known from whom they received the case, and notified him in time. The goods are now in the hands of the express company, A refusing to take them back. Is the express company liable to A or not?

A. No fact is stated by our correspondent on which the consignor of these goods can found a valid claim against the express company. A common carrier, unless he knows

or is practically certain that the goods still belong to the consignor, is bound simply to make a delivery satisfactory to the consignee. If the consignor asks to be notified of the consignee's refusal to accept the goods, or if they are sent c. o. d., or if there is any equivalent fact showing that the consignor still has an interest in the goods, and if the carrier has been furnished with the consignor's address, then the consignor should be notified of the consignee's refusal to accept the goods. In any other case the carrier is bound to satisfy only one person, and that person is the consignee. Any delivery which discharges the carrier, as between himself and the consignee, in a case of this kind, is good as against the consignor.

26. 1. What is the liability of a steamship on which liquid goods in casks are smashed and wasted in the hold of the vessel? Would the steamship agents be able to sustain their claim of exemption from liability on account of a clause in the bill of lading saying they are not liable for breakage, supposing that the loss is not caused by collision or by anything that they can show besides rough weather, during which the "vessel rolled heavily"?

2. What form of marine insurance policy, with regard to "particular average," would cover a loss like the one instanced above?

A. 1. A carrier cannot exempt himself from liability for damage caused by his own negligence or that of persons in his service. In the case of the liquid mentioned above, the clause in the bill of lading which exempts the carrier from liability for breakage, etc., will hold good unless such damage comes from bad stowage or careless handling of the vessel. Damage from the rolling of the vessel in a storm is covered by the exception, if the goods were well stowed, since the injury is not traceable to the misconduct of those in charge.

2. The ordinary policy of insurance contains this clause: "Not liable for leakage on molasses or other liquids unless caused by stranding or collision with another vessel." If this clause was stricken out or excluded in the written part the policy would cover a loss like that referred to by our correspondent.

27. Some time ago we received a telegram from our broker submitting an offer of 55 cents for some goods which he held in commission for us. As 55 cents was the regular market price for said goods, we wired back, "accept offer, deliver goods." In a few days we received a letter from the broker confirming his telegram, but the same read "45 cents," and it now turns out that his original telegram was made out "45 cents," but was transmitted by the operator as 55 cents. Meanwhile the goods had been delivered to the buyers, who declined to surrender the goods, and say the telegraph company is responsible. Is the telegraph company liable for this 10 cents difference? The total amount is just $50. The telegraph company claim they are not liable, the message not being "repeated." We understand that this claim of the telegraph company was not held good by the courts. How and from whom can we recover?

A. The question of the liability of telegraph companies for mistakes arising in the transmission of messages has been much discussed by the courts, conflicting opinions have been rendered, and the courts of the various States are not yet agreed upon the subject. Originally the tendency was to regard telegraph companies as common carriers and to hold them to a strict liability. When it became customary to allow common carriers to limit their liability by special contract, the same privilege was granted telegraph companies; but they were still held to a strict accountability in cases of negligence, and the courts held that error in the transmission of a message was prima facie evidence of negligence, and that the burden was upon the company to show that the mistake occurred without its fault. More recently, however, the weight of authority has been in favor of the doctrine that a telegraph company, by notice brought home to the sender of a message or by special contract, may limit its common law liability even for mistakes, unless they were occasioned by its gross negligence or willful misconduct. The printed notice on the blank furnished by the company is sufficient warning to the sender of the message that the company will not be held liable except on repeated messages, and the burden of proving gross negligence or willful misconduct is upon the sender.

28. I ship from a point on the Cape Fear and Yadkin Valley

Railroad, which issues through bills of lading, 300 barrels of rosin, via Portsmouth, Va., to a firm in Baltimore, to whom it has been sold at a certain price delivered. At the point of shipment there are no facilities for weighing the rosin, and the rosin was shipped as bought at an estimated average of 300 pounds to the barrel, which weight is stated on the bill of lading, 90,000 pounds aggregate, with through rate of freight to Baltimore, 13 cents per cwt. The section agent, however, through error, enters the weight on the way bill as 105,000 pounds, and the freight in excess is collected from the consignees in Baltimore and charged back to me. They return certificate of weight of 150 barrels, aggregating 44,945 pounds, showing that the estimate on bill of lading is very nearly correct; but allege that the weights of the other 150 barrels got mixed up with other rosin of the same mark, and they cannot separate them. The general claim agent at Portsmouth refuses to refund the overcharge unless I furnish the sworn certificate of weight of the entire lot, which, as explained, I am unable to do. Have I any remedy, and if so how can I enforce it? Shall I commence proceedings against the company that issued the bill of lading?

A. It is all very well for the railroad company to demand a sworn statement of actual weights where this can be furnished, but the next best evidence will have to satisfy that corporation. And a suit will compel the company to make the refund if our correspondent thinks it worth while to go to law.

29. A railroad company accepts a shipment consigned to a depot on its line in Louisiana or Mississippi, at which place it has no agent. The case is put off at such station and is afterwards stolen. Does the fact that it does not maintain an agent at the freight station relieve it from responsibility, and does the putting off of goods, under these circumstances, constitute valid delivery in the eyes of the laws of those States?

A. If a railroad, in order to accommodate a consignee, is willing to stop its trains and put off goods at a place where it maintains no warehouse, no regular station and no agent, and if the consignee, knowing or being informed that this is the state of the case, still requests that the goods be put off at such place, the law will sanction this arrangement and will not hold the railroad company liable after the goods have been deposited in such place in good order. Stations of this kind, known as "flag stations," are not very uncom-

mon in sparsely settled parts of the country. The consignee may have his goods put off at a station further from him where there is an agent and a warehouse, or he may have them put off at the flag station, where they will have no protection unless he is there to receive them. Knowing the facts he chooses the flag station, and the courts place upon him the burden of protecting his goods from the time they are deposited at such a station. Generally there is no statute upon the subject, and there is none in either of the States named by our correspondent.

30. Please let us know whether, under the Interstate Commerce law, as now in existence, a railroad company has the privilege of charging a higher rate of freight from an intermediate point fifteen miles from New York than from New York to, say, a point on one of this railroad's connections in Massachusetts.

A. There are exceptional cases in which the charge for a short haul, under the Interstate Commerce Law, may be greater than for a long haul. The provision concerning long and short hauls is contained in section 4 of the act, which is as follows: "It shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; * * * Provided, however, that upon application to the commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time describe the extent to which such designated common carrier may be relieved from the operation of this section of the Act." The commission can inform the shipper in any given case whether an investigation has been made and permission extended to the carrier to charge more for the short haul than for the long.

31. We have shipped through one of the steamship lines a case of goods amounting to $600, on which we paid the duty; but later we found out that the case did not arrive, and has not up to now. We made our claim on the steamship company for the amount, which they refuse to pay us, as they claim they are only responsible according to their bill of lading for $100.

A. In the case put by our correspondent the steamship company may or may not be liable for the full value of the missing goods. Its liability depends upon the manner of the loss and the nature of the contract under which the goods were to be carried. Nearly all bills of lading and other contracts for the transportation of goods now issued contain stipulations that the carrier is to be relieved of some part of his common law liability. If the stipulation is not contrary to public policy, if the shipper agrees to it expressly or by necessary implication, and if it is founded upon a valuable consideration the courts will sustain it. The burden is always upon the carrier, however, to show that the loss or damage arose from some of the causes contained in its exemption.

32. Is it true that "if the carrier offers to deliver the goods at any time, however late, the owner must take charge of them and get as good value from them as possible"?

A. "Hutchinson on Carriers" is regarded as a standard text-book upon that subject. In section 328 he says: "Although he (the carrier) may have delayed the carriage for an unreasonable length of time, the bailor is still bound to receive the goods, when tendered, where the delivery is required to be made, and cannot refuse them and hold the carrier liable for their value."

33. On August 2 I bought of H two cars of oats for the first half of August shipment at 43 cents per bushel delivered here. The oats were shipped in time and a bill of lading issued on car 66,491, dated August 5, by a dispatch company at Detroit. This car never arrived here, but went to Wakefield, R. I., and car 65,949 was sent to me. This change, it seems, was made by order of the shippers. This substituted car did not arrive here till September 29, and then oats had declined 7¼ cents per bushel, and my loss was 7¼ cents per bushel, or $108.75. What are my rights in the matter?

A. The seller of the goods in this case can be held by the buyer for causing such an interruption of the shipment after it was made as to delay the goods unduly and to cause a loss to the buyer. It does not follow, however, that the buyer may not at the same time have an option to proceed against the carrier if he prefers this course. Whether the carrier is or is not liable depends upon the provisions of the bill of lading as to the consignee, and upon this point no information is furnished to us.

34. Recently I received a notice of the arrival of some goods at a local freight depot, and engaged an expressman to go and get them. When he arrived at the depot he was told that the goods had not arrived and that the notice had been sent in mistake. He claims compensation for his time. Is R.R. liable for the charge?

A. It is the duty of a common carrier, as the courts interpret it, to give the consignee notice of the arrival of his goods. In the case our correspondent puts the carrier is clearly liable under this rule. He knew that his notice of the arrival of the goods would involve the consignee in the expense of sending for them, and inasmuch as this expense has been needlessly incurred by reason of the carrier's negligence, a valid claim exists against the carrier for reimbursement of the amount so expended.

35. After long delay a foreign vessel tenders goods to us which have been damaged by sea water so that they are worthless, or practically so. The ship owner demands that we pay freight upon these goods. We reply that we have a claim against him for damage to the goods, instead of being indebted to him for bringing them to us, that no one can be expected to pay a carrier for bringing him worthless goods, and that we decline to pay.

A. Freight is earned by a carrier whenever the goods are delivered. Though the goods are damaged so as to be practically worthless, the carrier still has a valid claim for freight. If the damage arose from a cause for which he is not responsible, his right to remuneration is not thereby destroyed. If the damage occurred through the fault of the carrier, or from any cause for which he is responsible, the owner has an enforceable claim against the carrier for the

amount of the damage, which may be greater or less than the freight; but the carrier also has a claim against him for the freight money.

36. What is your opinion as to the liability of a railroad for loss by fire of a shipment of merchandise in their care, even though the bill of lading reads, "This company shall not be liable for loss or damage by fire for any cause whatsoever"?

A. The companies now usually provide against such liability by clauses in their bills of lading, and different courts take somewhat diverse views as to the effect of these clauses. In construing such a provision as our correspondent quotes, "This company shall not be liable for loss or damage by fire for any cause whatsoever," a large majority of the courts hold that it does not protect the company against the deliberate wrong-doing of any of its officers or agents; a smaller number hold that it does not afford protection even against the gross negligence of agents or employes; but nearly all courts hold that if there has been no deliberate wrong-doing and no gross or inexcusable negligence, the company is exempt from liability under its agreement with the shipper.

37. We expressed a trunk to one of our salesmen. It should have reached him in twelve hours after shipping; eleven days have elapsed and yet no delivery. Is there any redress for the delay?

A. Part of an express company's obligation to make delivery is that such delivery shall be reasonably prompt. Failure to make reasonably prompt delivery is actionable precisely like a failure to deliver at all. The shipper is bound by the stipulations, if any, in the contract accepted by him, whereby the common law liability of the company is altered or decreased.

38. Is it true that in a majority of States a carrier remains liable as carrier until the consignee has been notified of the arrival of his goods and has had a reasonable time in which to remove them? What are the laws of Pennsylvania? We made a shipment to a customer in a small town in Pennsylvania of a few boxes of goods, and the goods were due to arrive there on a Thursday. The customer called at the depot and tried to get information

regarding the arrival of the goods, and found they had not reached there. On the next day, Friday, at 4 P. M., the railroad company notified a party who works for this consignee that these few boxes of goods had just arrived there and asked him to send for the same. The workman omitted to notify the consignee until late on Saturday afternoon, and it was then too late to go for the goods. On Sunday morning the depot burned down with all its contents. Now, according to the laws of Pennsylvania, is this a reasonable time in which to haul goods?

A. The Pennsylvania courts hold that the proper method of delivery by a carrier may be determined by the contract or by custom; and that, where there is neither an agreement nor any custom of the place to the contrary, a carrier by rail is bound to his strict common law liability only until the goods have arrived at their destination, have been put in proper shape for delivery to the consignee, and the latter has had a reasonable time in which to remove them. The courts have expressly held that no notice to the consignee is required. Moreover, it is provided by the bill of lading under which our correspondent's goods were shipped that "property not removed by the person or party entitled to receive it within twenty-four hours after its arrival at destination may be kept in the car, depot or place of delivery of the carrier, at the sole risk of the owner of said property, or may be, at the option of the carrier, removed and otherwise stored at the owner's risk and cost and there held subject to lien for all freight and other charges.

39. On July 31 we delivered to an express company a C. O. D. shipment for Vidalia, La. Receiving no returns on this, we requested the express company on three different occasions to have the shipment traced, but the first notification we had of the whereabouts of the package bore date of December 13, and the goods were returned to us in January. In explanation the express company claimed that the shipment was held up by quarantine regulations, and they were unable to make delivery until so late that the consignee refused to accept the goods.

A. All of these statements being substantiated by legal proof, the express company could be held liable unless the shipper signed a contract which was unusually favorable to the company. If c. o. d. goods are not accepted, or cannot

be delivered, it becomes the duty of the express company to give the shipper immediate notice of this fact. The company is not merely to send a notice, especially by a route that it knows to be closed, but it must see that the notice actually reaches the owner of the goods.

40. A, in St. Louis, returns to B, in New York, by express company, a parcel of goods to the value of $100, which B refuses to accept, and instructs the express company in New York to return these goods to the shipper. The goods were not returned by the express company, but kept at New York. During a fire these goods were burned. Who stands the loss?

A. If B had accepted these goods and then had ordered them shipped to St. Louis again, and the express company had kept them with that understanding or after receiving such an order, then the company would have been liable to B for a loss of his goods as a result of the company's failure to carry out its contract with regard to them. The same result would have followed if B had paid the company for carrying the goods to St. Louis a second time; this would have bound the company to a contract.

41. A shipment of wool was shipped from a far Western point to an Eastern city, routed via six transportation lines. The wool was damaged by water through flood in transit. The railroad on which the damage occurred delivered the wet wool to its connection, which road sold it without notice. Was that legal?

A. An owner of property is always entitled to be consulted before his property is sold unless there are very strong reasons why the sale should take place before there is opportunity to hear from the owner. If the property is such, or is so situated, that it will become worthless, or very much depreciated, before the owner can be communicated with, or if there is any other fact which would appeal to a reasonably prudent man as a sufficient reason for hastening the sale, the person having custody of the property, whether he is a carrier or not, may safely sell it without waiting to hear from the owner. The agent or custodian must always bear in mind that his act, if unexplained, is contrary to one of the clearest rights of a property-owner, the right, namely,

to say when and upon what conditions his property shall be sold.

42. We sold goods through a traveling salesman. All of them were shipped in good order, at the proper time and properly directed to the buyer. Some of them were duly delivered to him but others he has not seen as yet. The railroad acknowledges receipt of the goods from us, but gives no very satisfactory explanation as to what became of missing portion. Is buyer liable for lost articles?

A. If there is no agreement to deliver goods at the end of the route, and if the seller does not retain title by taking bill of lading to his own order, then a valid delivery can be made in the place where goods are at the time of sale. In that case the carrier is an agent of the buyer to receive and carry the goods to him, and a delivery to the carrier is a delivery to the buyer, whether the goods ever actually reach him or not; for any damage or default in transportation the buyer must settle with his agent, the carrier. But if the seller has agreed to deliver the goods at buyer's end of the route, or if he kept title in himself during transportation, then the carrier is the seller's agent; and there is no valid delivery until the goods have ben delivered at destination.

43. We are in the habit of receiving large shipments from the West by railroad, and the question of any accident to a lighter or float carrying our goods across the river has frequently worried us to quite some extent. Are the railroad companies responsible for damages should a float with their freight cars happen to sink or burn up?

A. Unless "dangers of the river and water transportation" are excepted by the bill of lading, as they sometimes are, the carriers are responsible for the safe delivery of the goods at the place agreed upon in the contract. The railroads long disputed their responsibility for damage to goods which were being conveyed across the river on floats or lighters, but they admit it now, and most of them, if not all, insure the lighters and cargoes in their own behalf.

44. We are large shippers of lumber, our cargoes being delivered alongside in lighters. In foreign going vessels the mates invariably make their receipts a few pieces short of our tally. When the bill of lading is presented there is a dispute between ourselves and the

captain as to the number of pieces on board. The insertion of the words "so many pieces in dispute" impairs the negotiability of the bill of lading.

A. We know of no means by which a captain can be compelled to give a true bill of lading in circumstances like those cited by our correspondent. The only remedy would seem to be for the consignor to send his goods by some other line or vessel. A bill of lading is not conclusive evidence as between the ship owner and the consignor, so that if the latter can furnish sufficient evidence as to the amount of the consignment, his rights may be enforced as readily as if the full amount of the shipment appeared in the bill of lading.

45. We shipped freight and insurance prepaid on steamer Pioneer to Wilmington, N. C. Steamer was lost. Are we entitled to return of freight paid, as freight prepaid was not included in insurance.

A. It is the doctrine of the courts of many States that one who has paid freight in advance is entitled to have it returned to him in any case in which he would be released from his liability if the freight had not been prepaid. Accordingly freight prepaid on goods which are not delivered may be recovered.

46. When a vessel arrives with a cargo of salt or kainit or other cargo of the kind, say 1,000 tons, more or less, and the captain requires money on account, is the consignee obliged to pay any of the freight before the cargo is landed and he is satisfied as to its proper delivery?

A. Freight is payable on delivery, and the vessel has a lien on the merchandise for the payment until it is delivered. No part of the freight money can be exacted before delivery. But if the consignee accepts partial delivery and begins to take the goods away before all of the consignment is out of the vessel, he can be required to pay *pro rata* the freight on such portion as he accepts.

47. A person boards a street car; after riding a block or so the car is obstructed. My friend says he is entitled to leave the car without paying a fare.

A. A street car company does not undertake to carry its passengers to their destination in any given time. A person who becomes a passenger is supposed to know this fact, to know the interruptions to which the cars are liable, and to agree to take the risk of such interruptions.

48. Some time since I ordered $10,000 of currency by express from New York. My correspondent in error marked the package $5,000. I paid the express company their rate for transporting $5,000, but on opening the package I discovered that it contained the amount ordered. I at once reported the matter to the agent here, and after consulting some of the officers of the company he said I owed him for transporting the additional $5,000. I paid him, but made the point that if the package had been lost en route I could only have recovered $5,000, as the package was so marked.

A. If the package had been lost in the case put by our correspondent, the express company would not have been held liable, beyond $5,000, in the courts either of New York or South Carolina, unless it could be shown that the loss was occasioned by the gross negligence or misfeasance of the company. One of the most thoroughly considered cases upon the subject decided that although a contract between a shipper and carrier. that if the former does not state the value of the property. he will not demand a sum exceeding $50 for its loss or detention, does not *per se* excuse the latter from liability for loss arising from their negligence, yet if under such a contract, goods of greater value are shipped in a package, the form, dimensions and general appearance of which fail to indicate its contents, silence of the shippers as to their value, although there be no inquiry nor artifice to conceal or deceive, will relieve the carriers from liability for ordinary negligence beyond such limit.

49. I have shipped goods by a steamer to a West Indian port. Out of the shipment two cases have not been delivered to the consignee. In answer to my claim the steamship company states that these two cases had been delivered at destination to the company's wharf, and that according to clause in their bill of lading, which I inclose, their responsibility ceased with that act.

A. The carrier is bound, under the bill of lading en-

closed, to deliver the goods to the consignee, and is liable for their loss in the case described.

50. Can the owners of a vessel hold goods on which the freight and charges have been paid, as ballast?

A. After the freight upon goods has been paid it becomes the duty of the carrier to deliver them within a reasonable time, and he is liable for any damage that may arise from his failure to do so. Whether the carrier has made delivery within a reasonable time is a question for the jury. If goods are brought as ballast and pay a lower rate by reason of that fact, there is a custom which would justify the carrier in retaining those goods longer than if they had paid full freight.

51. If a consignee has paid duties on imported goods and then finds that several packages have been rifled of a larger or smaller part of their contents, is it not the law that the carrier, who acknowledges his liability, shall refund the duties?

A. When a common carrier has failed to deliver goods at the destination to which he undertook to carry them the measure of damages, as generally defined by the courts, is the value of the goods at that place increased by such incidental damages, if any, as naturally and inevitably flow from the loss. But it has been expressly held that duties paid upon the goods are not an item to be included in ascertaining the damages.

52. On October 30 we shipped via rail to Pittsburg one small case of the value of $5 and a bale valued at $4, the invoice being mailed on the same day to the buyer. On November 27 we received notice from the buyer asking what was the matter with the goods, and saying that they had not arrived. We wrote immediately to the railroad stating the case. On December 9 we sent notice to the railroad again to trace the matter, this time by messenger. On December 18 we received a letter from the consignee that he had not received the goods and not a word from the railroad. On January 21 the consignee received the small case, but not the bale. Since that time we have tried to get a settlement from the railroad for the bale. On the 19th we received notice from the railroad that under the bill of lading contract property not removed by the person or party to whom consigned within 24 hours after its arrival at destination is then held subject to owner's sole risk.

A. A shipper is not bound by anything contained upon the back of a receipt given to him by the carrier unless there is proof that his attention was directed to the back of the receipt. The carrier's agent may direct the shipper to consult the back of his receipt, or there may be a notice conspicuously printed upon the face of the same paper directing attention to the contents of the reverse side. The mere fact of handing a receipt to the shipper binds him to everything upon the face of it; but he is not bound to consult the other side unless he is expressly directed to do so. If he accepts the receipt with a knowledge, conveyed in any way, that an important part of it is printed upon the back, he will be bound by that part as well as by the face.

53. The question arises through a loss of goods in transportation, the seller claiming that the moment the merchandise was delivered to the transportation company it belonged to the buyer and any loss sustained in transit was the buyer's loss.

A. When goods are sold to be transported to some other place the carrier may be agent either of the seller or of the buyer; the carrier is agent of that person who owns the goods during transportation. If the seller agrees to deliver the goods to the buyer at the place in which the buyer is to make use of them the goods belong to the seller until he has delivered them at that place. He may transport them himself or have someone else do it for him; in the latter case the person who does transport the goods is an agent of the seller and all questions arising out of transportation must be settled between those two. The goods do not belong to the buyer, and he has no risk connected with them, until they are tendered to him for acceptance at the place at which the seller agreed to deliver them.

54. We chartered a vessel to load for us at a certain rate of freight and half the towage at place of loading. The vessel was lost at sea after loading.

A. Whatever a man pays, or agrees to pay, for the transportation of his goods is properly included under the name of freight. If he agrees to pay a certain definite amount of money and also half the towage charges, whatever they may

turn out to be, this latter sum is part of the freight rate as well as the former. The obligation to pay one part of the freight stands upon precisely the same footing as the obligation to pay any other part of it.

55. Can a railroad corporation condemn a pier and bulkhead for railroad purposes?

A. The power given by the general railroad law to take property does not extend to that already held and dedicated to a different public use, inconsistent with its use for railroad purposes. But it has been decided that a right of way through the streets of a city, or upon piers and bulkheads, is not such an exclusive use as to prevent its acquirement for railroad purposes under the general law.

56. Is a vessel a "common carrier"?

A. A fair definition of this term is "one who undertakes for hire to transport the goods of such as choose to employ him from place to place," and the Supreme Court of the United States in Allen v. Sewall, 2 Wend. 327, has confirmed the English law "that persons carrying goods for hire by water are common carriers."

COMMISSIONS.

1. Sold for account of —— 100 bales Chinese rubber, usual good quality, at 36c per lb. less liquidated duties, in bond, etc., etc.

The duty on the article in question is 10c a pound, and we billed the parcel to the buyer as follows:

10,000 lbs. Chinese rubber at 36c per lb.....	$3,600
Less duties at 10c per lb.....	1,000
	$2,600

The broker claims that he is entitled to 1 per cent on $3,600.

A. Unless there is an implied or express agreement to the contrary, a broker or other selling agent is entitled to a commission based upon the amount of money which the buyer agrees to pay to the seller. If the duty has been paid on goods, or is to be paid by the seller, and they are sold for $3,600, the broker may claim his percentage of that amount. If the duty has not been paid, or if for any other reason the

amount of money actually passing from buyer to seller is only $2,600, that is the amount on which the agent's commission is to be reckoned.

2. Suppose a mill should ship goods weighing 1,000 pounds to a point in Texas, with an agreed allowance of 55 cents on the 100 pounds between the mill and merchant, and the amount of allowance aggregates $5.50, would the merchant be entitled to commission on the $5.50?

A. We are not sure that we fully understand our correspondent's question. If our correspondent means that $5.50, representing freight, is deducted from the price that would otherwise be charged, then that $5.50 is not to enter into the amount upon which commissions are reckoned. If $5.50, or any other amount, is deducted from the gross selling price for any reason whatever, and the actual selling price, the amount of money which the buyer does, in fact, pay for the goods, is decreased by that amount, then the sum on which the agent's commission is to be paid is decreased by the same amount.

3. On a sale of goods where there is a trade discount of 7 per cent is the salesman working on a commission basis entitled to a commission on the gross amount?

A. When there is a 7 per cent. trade discount a salesman selling the goods on commission is entitled to the agreed percentage of the gross amount of the sale unless there is an agreement or well-established trade usage to the contrary. The seller of the goods allows the purchaser, at his own option, to pay the full amount at the end of a certain number of days or months, or to acquit the debt by paying only 93 per cent. of it if payment is promptly made.

4. A sends eggs to a commission man on commission. Should the man settle on price he actually sold the eggs for or can he name some lower price on which to settle?

A. If there is no contract except that the agent is to sell the goods, take out his commissions and expenses and return the surplus to his principal, then the commissions are to be estimated on the actual selling price and the agent is bound to pay over to his principal all he received for the

goods less that amount which the contract authorizes him to withhold. This amount the principal can recover by suit, if necessary. A commission merchant's rights are not the same as those of a jobber.

5. Without any solicitation from me, and also without any previous correspondence, a grain house commenced to send me their quotations by mail. On receipt of their quotations one day I wired them an offer for some wheat, giving them the name of the party who made me the offer, which they declined. In the course of a few days, and after several letters and telegrams had passed between us, each prepaying his telegrams, I finally sold the wheat for them at a considerable advance over their first price, and at the end of the month I sent them a statement for brokerage, which they declined to pay, saying that they thought I was buying the wheat for myself. Am I entitled to brokerage for effecting the sale?

A. If an owner of goods sells them through an agent, knowing that he is acting as an agent in that transaction, and not as principal, the owner is legally liable for commissions. Transactions of this kind are very common; transactions, that is, in which there is no express agreement for compensation. The owner simply asks the agent to find a buyer for his goods, or the agent informs the owner that he is an agent, if this fact is not already known, and tells him that he has found, or can find, a buyer.

6. B owes me $700. After repeated efforts to get a settlement I turned over the matter to a law firm to collect. They succeeded in getting $400, from which amount they deducted their commission. Is firm entitled to commission on balance if collected another way?

A. Whether a lawyer who undertakes to make a collection is or is not entitled to a commission on money not actually collected by him is altogether a matter of contract. A lawyer who takes a claim for collection usually has his client sign a contract agreeing to allow the lawyer a commission on all payments made upon the account, whether these payments are made direct to the lawyer or not, and even when not traced directly to his efforts. If there is no such contract, commissions are due only on actual collections.

7. A salesman sells goods for a dry goods house on commission, without guarantee for salary and paying all expenses. Has the house

the right to withhold the commissions if the customers fail to pay their accounts?

A. A salesman paid by commission may agree with his employer that no commission is to be claimed except in those cases in which the customer pays his bill; this agreement will be enforced if made. But if there is no such agreement then the salesman is entitled to a commission on all sales to which his employer assents, whether the goods are afterwards paid for or not. The salesman is employed to find buyers for the goods, and nothing more. When he has found a buyer whom the principal is willing to accept, and does accept, as a buyer, the agent has done all that he contracted to do, and his commission is earned.

8. We have been in the brokerage business for fully forty years and have had innumerable cases of selling goods in bond, or, better said, at the duty paid price less duty in bond, and have at all times and in every instance charged and collected our brokerage on the duty paid value. Why was your recent decision adverse to this?

A. It was a case in which an agent undertook to find a buyer for goods in consideration of a certain commission or brokerage to be paid to the agent. The goods were sold for $2,600. They were in a bonded warehouse at the time; that is, they were imported goods, the duties had not been paid upon them, and the government was holding them until the owner should pay the duties and take possession. If he does not sell the goods meanwhile, if they are not damaged by "accidental fire or other casualty," and if Congress does not change the customs law, when he removes his goods from the warehouse he will be compelled to pay the rate now prevailing, which will aggregate, in this case, $1,000, and which the agent wanted to add to the price and collect commissions on.

CONSIGNMENTS.

1. Over ten years ago A offered consignments to B, which B accepted, asking 9½ per cent. for guaranty, storage, fire insurance and commission. When the first account sales were rendered, just ten years ago, B charged A 9½ per cent. for commission, guaranty, insurance and storage on the sales, and whenever shipments had gone

to the United States bonded warehouses, warehouse charges and insurance extra were added. B never protested against these extra charges; but a few weeks ago he stated that they had been overlooked. He wants a refunding for ten years. Is his claim right?

A. Having acquiesced in the justice of this charge for a decade, it would be very difficult, we think, for the consignor to recover any part of the sum thus allowed to the consignee. The courts do allow the correction of errors where they were of a nature not easily discovered by the party interested, and if the accounts in question were so complicated in form or structure that the owner of the goods could not readily discover the charge that was made, it is possible that he might compel a correction by showing, first that it was an improper item; and second that it was not discoverable by an ordinary examination of the account.

2. If a foreign manufacturer owes an agent here money for his commissions has the agent a right to take out from the sales?

A. In such a case as our correspondent puts the commission merchant has a lien on the goods of his principal to secure payment of his commissions and advances. It is a general lien, that is, he has a lien on each lot of goods, not only for the expenses growing out of his dealing with that lot, but also for any amounts previously owing to him by the same principal for storing, handling and selling other goods. This is a lien given by common law, and there is nothing in the statutes to deprive the commission merchant of it.

3. For the past three years we have consigned a bill of goods each year to a concern in the State of Missouri. The bills were marked "Memo," and the understanding was that all goods sold by January 1 were to be paid for at that time. Such goods as were not sold were to be returned to us. This was entirely satisfactory to both parties until the last fall, at which time that concern made an assignment. A receiver was appointed, and the entire business was sold by him, and turned over to the purchasers, such goods of ours as remained unsold being delivered with the business.

A. It is a general rule of law that an assignee for creditors, or a receiver, or trustee in bankruptcy, takes no better title to goods than the insolvent himself had. The case here

described appears to be that of a conditional sale; the buyer took title to such of the goods as he found a customer for, but the others remained the property of the consignor. This being the case, such of the goods as had not been sold before the bankruptcy the New York owner has a right to reclaim. As to the proceeds of the goods which have been sold and paid for, our correspondent is merely a general creditor in claiming these, and entitled to such dividends as other general creditors receive. This is the rule unless the bankrupt was a mere agent of the New York house, and not a conditional purchaser of its goods. The details of the agreement should suffice to show whether he was an agent or a purchaser.

4. A, a manufacturer, consigns goods to B, a commission merchant. A is dependent upon cash advances on the goods so consigned. The goods are not sold in the gray, but are sent by A to a dyeing company to be dyed. The dyeing company is entirely independent of A and B. A, needing the money, is anxious to get these advances before the goods in their finished condition can be delivered to B by the dyeing company. Is B safe in making advances to A?

A. The commission merchant may safely make advances in a case of this kind, provided the dyeing company and the principal both issue documents showing that the company holds the goods as agent of the commission merchant and to secure his advances upon them. The receipt issued by the company, as here described, is sufficient; but that cannot bind the owner of the goods, and the commission merchant should hold a document of some kind signed by him and clearly showing that the dyeing company is agent of the commission merchant, and not of the owner. In the absence of such a document the presumption would be, of course, that the company held the goods as agent of their owner. The simplest way to remove such doubt is through an acknowledgment, both by the dyer and the owner, that the actual holder of the goods holds them as agent of the commission merchant.

5. We had goods on consignment with a Toronto firm, and these goods were destroyed by fire. The Toronto firm wrote us: "We would say that your goods we held on consignment were not

insured by us, as we are not the recognized owners. We had other cases of consignments, but the stock was insured by the owners, as we do not hold ourselves responsible in any way in a case of this kind." Can we hold the Toronto firm responsible for loss?

A. The Canadian courts hold, as those of most of our States do, that an agent having property of his principal in his possession is not bound to insure it unless he is directed to do so, or unless there is a usage of the trade to that effect, or unless in previous dealings between the same persons it had been the custom of the agent to insure the goods, so that the principal was justified in supposing that he had done so in this instance. In our correspondent's case it does not appear that the agent had been directed to insure the goods.

CONSIGNMENT AND COMMISSION ACCOUNTS.

1. A received a consignment from B about one year ago, and paid the outlays for freight, etc. B now becomes impatient and wants goods sold, and authorizes C to examine goods and report as to condition, etc. Can A be compelled to allow such action?

A. The owner can tender to A the advances and what is due under them and such delivery commissions as custom sanctions, and order the goods removed. We do not see on what ground A can refuse to allow any agent of the owner to inspect the goods, but if he does so refuse, B's remedy is to pay what is due and take the property away.

2. A commission house to whom we consigned some goods recently returned us an account sales, and by an error in yardage gave us credit for more cash than we were entitled to. In whose favor is the mistake?

A. The mistake was in favor of the mills which would have profited by it if the error had not been corrected. The correction was in favor of the commission house.

3. A vessel comes into port loaded with cement in barrels and goes to an uncovered pier to discharge. As soon as legally permitted she commences to discharge, which she desires to do quickly. Saturday being one of her working days she puts out on the dock the large amount of 2,000 barrels, half of which is discharged after 12 o'clock;

that day being a legal holiday, is the vessel bound to protect the goods which are discharged after 12 o'clock and which consignees are unable to remove from the dock?

A. Goods put on the dock during the hours of a legal holiday are at the risk of the vessel and not of the consignee until the latter has had time to remove them after the holiday is over. In the case cited the vessel was bound to look after and protect all the cement put out after 12 o'clock on Saturday.

4. A, commission merchant in New York, is receiving consignments of goods from B in Europe. A opens a banker's credit to enable B to draw against shipping documents of goods on consignment for three-fourths of the value of invoice. A sells the goods and sends B an account of the sales, charging the commission and guaranty fixed and deducting from the net proceeds the amount of B's draft, and three-fourths of 1 per cent. banking commission paid to the bankers on amount of said draft. Was A right in so doing?

A. As we understand it, A furnishes the banker's credit, either because he has not the capital to make the advances himself, or is not well enough known abroad to have his acceptances discounted there. It appears to us that the banker's commission is for part of his service and to be paid for by himself.

5. The owner consigns a lot of goods (eggs in this question) without any advances except cartage and freight; part is sold and the regular commission is charged on the sale. The remainder are turned over to other parties on the owner's order. What commission, if any, are we entitled to on the goods turned over to other parties?

A. The established custom makes the charge legal and it can be collected. The Chamber of Commerce recommends full commission on goods thus turned over, to the extent of advances, and half commission on the remainder. But custom, as we have heretofore shown at great length, has varied this in different trades.

6. A commission house has a considerable loss by fire of a consigned stock, and in accounting to its consignor for the insurance company's settlement has it not a perfect right to deduct, besides

the usual commission, also the expenses it incurred in having the loss properly adjusted.

A. A commission merchant, like any other agent, is entitled to be indemnified by his principal against all damages and losses which are incurred by him, and all costs to which he may be subjected in the course of his agency, without fault on his part. The expense incurred by the agent in adjusting a loss is properly chargeable to the principal, if the adjustment were made at his request or with his consent or within the proper discharge of the agent's duties.

7. On April 28th last we shipped 250 packages of goods to a western house to be sold on commission for our account. On June 14 we received account sale and check, which closed this transaction. On July 9 our western friends write us that 29 packages of the 250 were damaged and had been returned to them by the buyer, at the same time sending us bill for same and writing us that they hold these 29 packages subject to our order and asked us to refund the amount. Are we right in refusing to comply with request?

A. The decision of this question depends largely upon the custom prevailing in the trade. This much is certain: that the commission merchant is the agent of the shipper, and is bound to obey all of his reasonable instructions. But in the absence of express instructions the powers and duties of the commission merchant are determined by the usages of the trade. If these usages allow the goods sold by him to be returned to him within the time here mentioned, he may take them back and charge his principal with them.

8. In the case of a vessel arriving at this port, with a cargo of 5,000 packages of goods, all of the same kind, but shipped by five different manufacturers and consigned to five different concerns here, each of the five lots being separately distinguished by different labels and shipping marks, has the vessel a legal right to discharge the cargo promiscuously, paying no attention to the marks, mixing them altogether on the dock, and tell the consignees each to pick out his own marks?

A. It is only by usage and the custom of ports that depositing goods upon a wharf has come to be considered a valid delivery. But the custom of every port, we believe, requires that they should be separated from the goods of

other consignees. "The goods must not be piled on the wharf promiscuously with those of other consignees, but the master must, as far as possible, separate the different consignments so as to render them accessible to their respective owners."

9. A banker advances money to a party who is known and has been for some time known as an importer taking as security Custom-House withdrawal papers in the name of the importer and warehouse receipts in the banker's name. If it is subsequently shown that the merchandise was consigned to the importer can the foreign owner obtain the goods from the banker without paying the amount of the loan?

A. The factor or agent to whom goods are consigned for the purpose of sale is by the statute deemed "to be the true owner thereof so far as to give validity to any contract made by such agent with any other person for the sale or disposition of the whole or any part of such merchandise, for any money advanced, or negotiable instrument or other obligation in writing given by such other person upon the faith thereof." The right to sell in this case gives the right to hypothecate for a loan.

10. An Irish firm consigns goods to us, on which we make advances, both cash and acceptances, of their time drafts; in the event of consignors becoming financially embarrassed, would our acceptances, not due, be on the same footing as our cash advances?

A. All advances made by a consignee upon goods subject when shipped to the control of the consignor, are a lien on the property second only to the freight and duty. It makes no difference in that respect whether the advance is in cash or an acceptance, or a promissory note.

CONTRACTS.

1. We made a contract with a western house to deliver to them during the months of June to September eight car loads of goods—one or two car loads at a time—at a certain fixed price against their 60-days acceptance from date of shipment. Since making the contract we received private information that the house is not now in very good standing, and that the account will in all probability be a bad one. Other circumstances also convince us that we ought not

to give them this credit, and we have written to them frankly for a statement which they refuse to give. Are we liable for breach?

A. If the Western firm were guilty of no fraud or deceit in obtaining the credit, and if they are not insolvent now, they are entitled to a fulfillment of the contract. If they sue for a breach of the contract they may be compelled to tender payment in order to sustain their suit, and the measure of their damages will be the increase in price of the goods since the contract was made.

2. In the presence of all parties concerned A says he will sell his share in the concern for a certain sum, say $5,000. B at once accepts the offer and tenders a $5 bill as part payment. A refuses the $5. Can A be held to the bargain?

A. A verbal contract of this character, no consideration having been accepted by A, is not legally binding on any of the parties.

3. I sold and delivered to B a quantity of merchandise. In payment B agreed on broker's contract to give me C's note, which is perfectly good. B does not give C's note as agreed, but fails in about fifteen days after receipt of the merchandise. What can I do?

A. Our correspondent will have to pocket whatever may be the loss. If B was solvent he could be held to his contract, or be made to pay for its violation. But his insolvency makes his engagement of no value.

4. A sells B merchandise to arrive, ex ship, cash in ten days, and gives delivery order on steamer May 15, when goods are all out of vessel. Buyer experiences delay in receiving, finding no berth for lighter, and goods are not weighed until May 20. Steamship company will not allow goods to be weighed until removed.

A. If buyer accepted delivery May 15, the time runs from that date, although he was not able to take the goods away for several days afterward.

5. A makes an agreement with B to transport 150,000 pieces wood for a stated sum, based on the representation of B, that measurement of above contained about 10,000 cubic feet and weighed about 75 net tons. After completing the agreement A finds that he has transported 175,000 pieces, weighing 215 net tons and measuring about 19,000 cubic feet. Is not A entitled to extra freight?

A. If A saw the lot of wood to be moved and agreed to transport it for a round sum, the fact that B misrepresented the number, measurement and weight of the pieces would not be sufficient ground for recovering an excess of the compensation agreed upon. But if A agreed to move 150,000 pieces of wood at a certain price, and has been employed to move 175,000 pieces, he can collect for the difference.

6. Please advise me if a house can be compelled to ship goods sold at a loss by a drummer.

A. A firm that sends out a salesman with samples is legally bound to deliver all the goods which he contracts to deliver and at the stipulated price, provided the agreement is in writing, or for an amount under fifty dollars. It will make no difference with the employer's obligation that the salesman has violated his instructions or sold at a loss.

7. If A offers B, by letter, a certain article of merchandise at a specific price, and B responds by letter within a reasonable time, accepting A's offer unconditionally, before A has withdrawn it, would it constitute a legal and binding contract?

A. No further writing is necessary, and the sale is binding provided the offer was actually accepted "within a reasonable time." This is a question of fact, and when in dispute, is always left to a jury or other arbiter.

8. A, a manufacturer, makes a contract with B, whereby the latter is to sell all the former's products for a term of years. B, in turn, enters into a verbal understanding with C, giving him the sale of the goods in certain territory for the same period, he (B) to share in the profits. The contract between A and B comes to an end by mutual consent before its expiration. A is desirous of retaining C's services, but declines to recognize the arrangement with B, and a regular contract is then made between A and C, whereby C is appointed selling agent in the territory. Has B any claim?

A. B has no claim on C for any share of the business after his surrender of his contract with A, either in law or equity.

9. B, a broker in St. Louis, inquires of A, an importer in New York, at what price he will sell to a house in his town 25 cases fish, to be shipped direct from Europe to him. A answers that he will not sell

that way, but offers to import the goods specially and gives price f. o. b. at New York. B answers to book for C 25 cases at price named f. o. b. and to send C now, as sample, 1 case by a specified freight line and he will then decide whether to accept 25 cases of same quality. A received this letter November 1 and immediately sent C the desired sample, as requested. On November 13 B writes A that C accepts the 25 cases of goods. A refuses shipment because of delay in acceptance; is he right?

A. If no limit of time was fixed in any of the negotiations, and no hint that extra diligence or speed was required in transmitting the order, we think that A is bound to accept it and to deliver the goods. In the absence of anything to call for greater activity, we do not think there was an unreasonable delay in the answer.

10. Will a labor strike relieve in law either party to a contract from the performance of the conditions of the contract in the time specified in the contract?

A. Nothing will relieve a party to a contract from his full obligation under it except an act of God, or the public enemy, a provision of the law or the act of the other party to the contract save it appear in the contract. In regard to a strike of workingmen it was decided that the corporation was responsible for damages resulting from a delay to transport freight in the usual time, where the delay was caused by a great number of its agents suddenly and wrongfully refusing to work.

11. A book canvasser enters a house and urges the occupant to subscribe to a certain work. She refuses, claiming to have no use for the book. The canvasser induces her to retain it for examination, and asks her to sign for it a proof of where he has left it. The publishers say a contract was signed. Is she liable?

A. Whether the alleged purchaser of the book in this case can avoid the contract which she has signed will depend upon her ability to show, to the satisfaction of a jury, that her signature was secured by fraud and misrepresentation. Fraud vitiates every contract, as between the immediate parties to it, and fraud has been defined by the courts to be "any kind of artifice employed by one person for the purpose of deceiving another."

12. If three firms form an association and a fine is stipulated in case any of the constituents of the association breaks any part of the agreement, can such fine be enforced by law?

A. If several firms engaged in the same line of trade enter into an association formed to better the condition of the business and to prevent unreasonable competition in it, the courts will aid in the collection of a fine incurred by one who has been guilty of a breach of agreement, provided the combination is not of a kind held to be in contravention of public policy and contrary to law for this reason. The courts do not condemn every agreement in restraint of trade, and it is impossible to say whether any particular agreement is likely to be so condemned unless all of its terms are fully set forth and the nature of the commodity in which the party deals is made known.

13. I made a contract to sell a piece of property, one clause of which says: "Deed to be delivered September 30th at noon, at No. —," when final payment is to be made. Now, as September 30th falls on Sunday, is the contract good?

A. When negotiable paper falls due on Sunday, the demand was formerly made on the prior Saturday, although this is now changed. But with this exception, the rule has always been that when the time for the performance of a contract falls on a Sunday, the performance may be tendered on the following Monday.

14. An exporter represents to us that he has a ready market abroad for a certain article in our line and offers to buy at a price, but advises us to send on commission, saying it would be much better for us. The goods do not sell as expected, and after three months we order him to return them to us at once, which he fails to do.

A. In the case put by our correspondent, if the exporter sold the goods, or exercised any act of ownership over them, after he had been instructed by the principal to return them, he may be sued for their conversion, and may be arrested under the provisions of law.

15. On the strength of B's assurance that he can manufacture a special piece of goods exactly according to A's specifications, A

pays to B a sum of money to cover the cost of special apparatus necessary to manufacture the goods desired by A. B accepts A's order; but after six months B finds that he cannot make the goods. Can A compel B to make good any loss?

A. The precise terms of the agreement are important in this case. As the matter is here stated there seems to be no redress. If B expressly agrees to manufacture and deliver to A goods of a certain kind, and A advances part of the consideration in order that B may supply himself with the proper machinery, or for any other reason, then B must repay either in money or in goods; he is also liable for damages if he fails to deliver the goods. But if B merely expresses belief, however strongly, that he can make the goods, he would be under no obligation in case of failure.

16. November 14, A, of Minneapolis, quoted flour at "Highly," i. e., $5 50, and asked for offers. November 16 we wired him, using cipher book which he furnished, "Book us 2,000 if can cover at hideous," i. e., $5 40. He replied same day, "Cannot promise shipment before first half December, shall we book?" November 19 we wired, "Book the flour." November 19 he replied: "Telegram received; have booked 2,000 at $5 50; advance price to $5 55." We replied at once: "Serious mistake; see our dispatch. Our offer was, book 2,000 if can cover at hideous, meaning will take 2,000 if prices decline to $5 40" (to-day). November 22, by letter, we learned our telegram read "if can come at once," instead of "if can cover at hideous."

A. Under the facts of this case there is no ground upon which the Minneapolis miller can hold our correspondent. The correspondence was carried on through the medium chosen and recommended by the former and in accordance with a book of instructions issued by him. Through this medium the buyer made one offer, and the seller misunderstanding it, accepted another. There never was any common understanding as to the price, which is a very material element of the contract; for this reason no agreement was reached, and neither the buyer nor seller was bound.

17. We bought of A & Co. 50 packages of merchandise at — cents per pound, to be delivered free on board the cars at L. Nothing was said in the contract that goods must be taken all

together. We ordered the goods shipped as we sold them, A & Co. always delivering at the railroad and shipping the goods as per our order. In July we sent A & Co. an order to deliver a certain number of packages on the cars, to be shipped to a western point. The goods were never received by our customer, and after three months A & Co. found their clerk had never made the shipment. We having previously paid for the goods, sent A & Co. a bill for their cost and profits lost. They refused to pay the bill on the ground that they had made partial shipments as an accommodation and the goods now in their warehouse were ours. Have we not both a moral and legal claim?

A. As there was no express stipulation in the contract that the goods were to be delivered at one delivery, the intention of the parties to the contract would govern so far as this intention could be gathered from their words or actions. By shipping a part of the goods without the remainder, or by agreeing to do so, and claiming to have done so, A & Co. put it out of their power to avoid the contract on the plea that all of the goods were not ordered to be delivered at the same time. For the breach of an executory contract to sell and deliver personal property, the measure of damages is ordinarily the difference between the contract price and the market value at the time and place for delivery; but if the contract is made to enable the buyer to perfect a sub-contract, the terms of which are known to the sellers, he may be held liable for the difference between the sub-contract price and the principal contract price.

18. A, an inventor, is granted a patent on a certain article, but in the letters patent also appears the name of B, to whom A has assigned one-half of his right and title therein. The patent was issued four years ago and B has always refused to manufacture or aid in manufacturing said article.

A. Joint patentees are not necessarily partners. Each is at liberty to use his half of the right as he may see fit, and by so doing will incur no obligation to the other for profits. Either, or any person with permission from either, may manufacture and sell the article patented without the consent of the other.

19. Please inform me who must stand the loss of a certain

amount of money taken from a registered letter between the sender and receiver.

A. The loss will fall upon the one at whose risk the money was sent. If A directs B to make him a remittance, and B sends the money in a letter, he sends it at his own risk.

20. We understand that in the case of the steamer Montana the United States Supreme Court declared against the so-called negligence clause which steamers and British vessels generally insert in charter parties and bills of lading.

A. The United States Supreme Court rendered a decision declaring against the negligence clause in the bill of lading. The basis of the decision was that the contract was to be interpreted in accordance with the laws of this country, which do not allow a common carrier to escape liability, even by contract, for damage arising from his own negligence or that of his servants.

21. I purchased from a European house through their New York agent "about 100 tons of merchandise." By mistake they shipped 148 tons, and write that they are willing to dispose of 38 tons, but that I must take 110 tons, because under the usual construction of the word "about" the seller has a right to ship 10 per cent more or less.

A. Such words as "about" and "more or less" are often inserted in a contract of sale in order to relieve the seller from liability in cases where he has used his best efforts to deliver the amount called for. In any case where the seller, under such a contract, has tried to make delivery as stipulated, the courts will allow him a fair margin to cover unavoidable mistake; but we do not know of a case in which the court has allowed the seller to take advantage of this clause for the purpose of deliberately compelling the buyer to take more or less than he had contracted for.

22. The J. B. Mill makes a contract with S., J. & Co. for the production of a certain number of looms for three to six months on a certain fabric. If the J. B. Mill should be delayed by any reason from beginning the contract at the time stated, does the buyer have the right to cancel the whole contract, or can he only cancel the deliveries during the time the mill fails to make them?

A. In construing contracts the general rule is that the quantity to be delivered depends upon the contract, the seller being obliged to deliver just what that calls for, no more and no less. But where the contract permits of a latitude of construction as to quantity the courts favor the seller as far as this may be done without serious detriment to the buyer, on the ground that the latter had it within his power, in making the contract, to stipulate for a precise amount. In an agreement to take about 2,000 tons of oil cake, being all that should be manufactured by the sellers at their mill during a specified time, obliges the buyer to take all that is made, in the absence of proof that the mill was unduly urged, the quantity mentioned being only expressive of conjecture and not controlling.

23. A, after several consultations with B, who occupied a salaried position, agreed to put C, a relative, in partnership with him. In view thereof B resigned his position, made other preliminary arrangements, obligating himself in several minor matters in relation thereto, and had co-partnership papers drawn under the directions of A, who then declined to go on. Can B recover damages?

A. B's promise to form a partnership with C, with or without the other acts of B as here described, is a sufficient consideration for A's promise to place his relative C in position to become a member of the firm. If A fails to fulfil his obligation without valid excuse (and no such excuse is made to appear in this case) he is liable to B for the resulting damages, as he would be in any other case of breach of contract.

24. Please advise us what are the rights and redress of a manufacturer who has received and made up an order for a customer and then same has been canceled when he has been guilty of no fault.

A. If a manufacturer has received an order to make goods for another person, and has the goods practically finished when the person ordering them undertakes to rescind the contract, he may take his choice of these remedies: He may hold the goods himself or place them in a warehouse at the risk and expense of the owner, and then hold the latter

for their full value; or he may sell the goods at auction for account of the person who ordered them.

25. I have a contract with my house according to which I am to receive a fixed salary and a commission on all the sales I make. The contract expired, say for example, September 30. Before the contract expired, say in July, I made a new contract with the firm according to which I am to receive an interest in the profits of the business. Inventory was taken on September 30. A great many of the sales which I made were for future delivery, and a considerable amount of these orders were executed after the first of October. Will it be double pay if commissions are paid on these?

A. There is no reason why a salesman should not receive a commission on his sales and also a percentage of the profits of the business if his contract so provides; to call it "double pay" does not affect the rights of the matter. There is no reason why this contract should not be carried out in strict accordance with its terms, unless it can be shown that the contract embodies a mutual mistake; such a mistake can always be corrected.

26. Many of our clients are compelled through a given condition to receive many orders over the telephone. Their representatives have local headquarters, call up their customers over the telephone, they quoting and the customer buying in that manner. Sales are in carload lots, the value running approximately $1,000 per car. Market conditions are unstable and often while cars are in transit the price will fall much below the purchase price, and the purchaser refuses to accept. What are our client's rights?

A. In almost every State in the Union section 17 of the old English statute of frauds has been re-enacted. That is the section which declares that no contract for the sale of merchandise of a certain value (generally $50 or over) shall be valid and enforceable unless some written note or memorandum of the transaction be made and signed, or some part of the goods delivered and accepted, or some installment of the purchase price be paid. This is evidently the statute upon which the buyers are relying in the case put by our correspondent. It will not avail them, however, because Illinois is one of the very few States in which this particular section of the statute is not in force.

27. We are now using the new uniform bill of lading and receipts. Some of our customers object to them on the ground that the carrier is released from the common law liability. Can it be changed by writing in other conditions?

A. It is a rule of law that written conditions in any document take precedence over printed conditions. This is simply a recognition of the well known fact that printed blanks are often used when some of the printed conditions are not satisfactory to the parties. It is recognized that the writing is a more deliberate act; that it was inserted by the parties themselves and not by the person who drew up the form for general use, and that the writing represents, at least, a later decision of the parties than the printing.

28. A is solicited by B to enter into partnership with him, and after a short visit to the town where B is located, A leaves a sum of money in B's hands, with the distinct understanding (verbal) that the money is to be returned in case A should find later that it would be unprofitable to enter into a business relationship with B. In giving the money, A admitted to B that things up to that time looked all right, but said that he would want to think the matter over. Business proving illegal A declined; can he recover money?

A. A can recover the money deposited with B, in this case, on either of these two grounds: (1) Because there was an understanding when the deposit was made that the money might be withdrawn if A decided, upon further thought and investigation, not to become a partner in the business; (2) because an agreement to enter into an illegal undertaking is not binding. This latter ground will be tenable, even if A fails to show that the deposit was merely conditional. B's claim that A's money is forfeited because he did not enter the partnership finally must be very conclusively proved if it is to stand.

29. If a seaman on a coastwise steamer gives a power of attorney to a stranger to collect his wages, can a steamship company honor same?

A. If a seaman on a coastwise steamer should give a power of attorney to anyone to collect his wages we are of opinion that the steamship company would do wisely to re-

fuse to recognize the power. The statutes are very explicit in stating that no sale or assignment of a seaman's wages shall be recognized as valid. The power of attorney might or might not be employed to cover and disguise an assignment.

30. I occupy an apartment in an apartment house, the floors of which are wood and thin and are covered with inlaid wood flooring, and if anyone walks heavily it sounds very plain in the apartment under. When asked to renew my lease I wrote to the owners, saying unless the floor could be deadened by sufficient carpeting or rugs I would not take the apartment. Owners wrote me in reply: "I have gone very carefully over the matter of floor covering. I will see that sufficient rugs or carpet are provided." On receipt of this letter I made a lease for another year from October 1. The tenants that took the upper apartment were very noisy because of no floor covering.

A. Our correspondent is entitled in this case to give up his lease and abandon the premises. It is well settled that a written lease, or any other contract in writing, cannot be varied by any evidence outside of the writing itself; but this lessee is simply demanding that the landlord live up to a collateral agreement made as an inducement to the lease.

31. A heating plant installed one year ago is in poor working order and not complete. The contractor makes no move to finish it, nor does he request the balance of the contract price.

A. Unless the contract contains an express provision to the contrary, one who undertakes to do a single piece of work for a single price is not entitled to any part of the money until the work is entirely and properly done. Our correspondent, in the case he puts, should call upon the contractor to put into proper shape such work as has already been done and to complete the contract within a reasonable time, notifying him that if this is not done by himself it will be done by another at his expense.

32. I have a contract with a builder to build me a house in the State of New Jersey. The house is to be finished on a certain day; if not finished on the day named he is to pay me $50 per week for every week thereafter until the house is finished. Nothing is said in the contract about the possibility of the house being finished

before the date named (as is usual). If the house is not finished on the date named could I collect from builder the penalty?

A. The obligations which one party to a contract assumes under it furnish a sufficient consideration for all those assumed on the other side. It is not necessary that each particular duty upon one side should be offset by a like duty upon the other. This is a common law rule of contracts, which is not changed by the statute in New Jersey. If the provision which our correspondent quotes from his contract is set aside by the courts it will be upon the ground that it provides for the payment of a penalty, and is not in the nature of liquidated damages.

33. Is it customary to date an agreement, drawn up in German and relating to the transfer of a selling agency, at the end of the document above the signatures of the contracting parties and witness?

A. An agreement drawn up in German, like one written in English, may be properly dated either at the top or at the bottom. Both systems are in vogue and both are equally legal; it is rather more common, perhaps, whether the agreement is in English or another language, to place the date at the end, just above the signatures.

34. In making a proposal a price was given and it was stated that it was figured at the rate of seventy cents per square foot, which was less than the regular rate. This was fully explained. The work was finished, when it was discovered that an error had been made in computing the number of square feet, there being twice as many as were estimated. Must all the work done be paid for?

A. If it is clearly understood that work is to be done at seventy cents per square foot that party to the contract who is to pay for the work cannot escape any part of his obligation because there has been a miscalculation as to the amount of the work or a clerical error in multiplying and arriving at the total. One party to a contract can take advantage of a mistake made by the other only when the first party acts in perfect good faith himself and is, in fact, misled by the error. In this case the second party was in as good a

position to estimate the amount of work, or to make the mathematical calculations, as the first party was in.

35. A, in his endeavors to induce employes of B to work in his factory, makes propositions to these employes of such a nature as to prove a detriment to manufacturer B. The object, of course, is to seriously cripple the factory of B. Is there any law remedy?

A. There is no general statute as in some of the Southern States, giving redress in a case of this kind. The facts may be such, however, that the aggrieved manufacturer need only appeal to common law principles. It is an actionable wrong, at common law, for one person maliciously to interfere in a contract between two others and to induce either of them to break the contract to the injury of the other; the person so injured may recover the amount of the damage.

36. We took an order on September 15 for one thousand pieces of goods, deliveries to commence in two weeks and be completed by October 30. We commenced the deliveries on October 10 and will complete deliveries in the time mentioned. Has the buyer a right to cancel if the deliveries are made in the time specified?

A. If a seller of goods undertakes to begin delivery within two weeks of September 15, and to continue until 1,000 pieces have been delivered on or before October 30, that part of the contract relating to the beginning of the deliveries is as important as any other. If two weeks elapse after September 15, and no goods have been tendered, the buyer may repudiate the contract at once.

37. A owns the die for making an article; the die stamps A's trademark on the article. A contracts with B to make the article in A's die and to deliver the article to A. After B has made a quantity of the article, A is enjoined by the court from making the article, as the patent for same is owned by others. B is also enjoined. B has a quantity of the article named and holds the same for one year. Meantime the patent expires and B calls upon A to take the articles made. A declines, alleging the article is not up to the standard. Can B sell the article if A objects?

A. This seems to be a case in which the law will leave both parties to the contract in the position in which their own acts have placed them, and will refuse its aid to either of them. A patentee has for the term of his patent the ex-

clusive right to "make, use or vend the invention or discovery throughout the United States and the Territories thereof." It is an infringement to make the patented device, as well as to sell it, and it is an infringement to make it before the patent expires with an intent to sell it after the expiration. One who manufactures a patented article for another must take notice of the provisions of the patent laws and the acts done under them, as if he were manufacturing for himself; ignorance will not excuse him.

38. A. B. & Co. placed an order with E. & Co. in February, goods to be delivered in July. E. & Co. accept the order and send a confirmation of their acceptance to A. B. & Co. On May 1 A. B. & Co. dissolve partnership and the business is continued by B. alone under the style of B. & Co. E. & Co. are verbally informed of this change by B. some time before it takes place, and after having asked for and received a statement tell B. that they can very likely fill the order and place a certain line of credit at his disposal.

A. Under the statement of facts here made E. & Co. are not bound to supply goods on credit to B trading as B. & Co. One who has sold goods on credit to one firm cannot, of course, be compelled to release that firm and look to its successor as the other party to the contract. The sellers in this case might have been bound if they had absolutely agreed to furnish the goods to the new firm after receiving notice of the change. They appear not to have done so, however; their statement to the successor of the old firm was merely that they could "very likely place the order."

39. Some three weeks ago I was engaged by a corporation as general agent. I signed an agreement for one year and gave $50 cash security. They agreed to pay me $20 a week and expenses not to exceed $18. This salary was to be paid in the following manner: I was to travel between New York and Albany. As soon as I reached a town I was to advertise for men to handle the corporation's goods, getting from each $5 as security for the outfit I furnished them. I was to get my salary and expenses from the collections. I made none whatever. How can I recover the $50 from the corporation?

A. The ability of our correspondent to recover the money he has deposited as security will depend largely upon the nature of the agreement under which the deposit was made.

If the deposit was merely intended to secure the corporation against any misappropriation on the part of the agent he is entitled to a return of the money now that he has abandoned the employment and no security is any longer needed. If the money was deposited as the amount of liquidated damages in case the agent failed to carry out his contract there may be more difficulty in recovering it. Much will depend upon the precise wording of the agreement under which the deposit was made and also of the contract for services.

40. Goods are sold to a customer who has no credit with the house of the seller, and are sent C. O. D. The buyer at the same time selects another lot of goods, which the seller agrees to hold for him for thirty days, within which time the buyer may order them shipped to him C. O. D., and a letter written later to the buyer says: "Subject to your order to be taken out by you within thirty days." By an accident these latter goods are sold to another, and when buyer writes, before thirty days, to have them shipped to him, the seller cannot send them. The seller holds that there was no sale,—is he right?

A. The transaction here described is an absolute sale of specific goods, and is enforceable on both sides. The purchaser selected the specific goods forming the subject of the sale, bought them and agreed to pay for them within 30 days; the seller could have tendered the goods at the end of the 30 days, and compelled the buyer to pay for them, if he had not done so sooner. The seller, on his part, sold these particular goods, and then undertook to act as warehouseman of them for so many days, not exceeding 30, as the buyer should see fit to leave them with him. During the 30 days the goods were the property of the buyer; the buyer owed to the seller the purchase price of the goods, a debt payable at the buyer's option at any time within 30 days, but absolutely due at the end of that time, if not sooner paid. If the goods had been destroyed within the 30 days, without fault on the part of the seller, the loss would have fallen upon the buyer; they were such goods as are sometimes described in insurance policies as "sold but not delivered."

41. Please explain the difference between joint and joint and several obligations, stating in each case what the law is.

A. 1. As a general rule, all joint parties must be joined as defendants in a suit and all must be served. There are a good many exceptions to the rule.

2. If the obligation is joint only, and all proper parties are not joined, those who are joined need not answer; or, if the defect appears on the face of the pleadings, they may demur, &c.

3. If execution is issued under a judgment taken against a number of parties jointly the execution must correspond strictly to the judgment.

4. If any one of several joint or joint and several defendants is compelled to pay more than his share he is entitled to contribution from each of the others. Judgment against one of several joint parties is a bar to an action against all of them jointly.

42. Please repeat your decision in a case where a stenographer, by mistake, gave a price for potatoes of 35c instead of 55c, and the courts decided that the buyer had to pay 55c.

A. A seller directed his stenographer to write a letter offering potatoes in carload lots at 55 cents per bushel. The stenographer, by mistake, inserted 35 cents instead of 55. The recipient of the letter immediately telegraphed for several carloads of potatoes "at the price named in your letter." The potatoes were shipped before the seller learned of the mistake. The fact that the mistake had been made was brought to his attention, however, some time before the potatoes had reached the buyer, and before he had made any disposition of them. Thereupon the seller immediately telegraphed the buyer that a mistake had been made in the quotation, told him what it was, and informed him that he was not at liberty to take the potatoes into his possession or to deal with them as his own unless he was willing to pay 55 cents a bushel for them. With this telegram before him the buyer did take charge of the potatoes and used them. The seller then sued for the price of them at 55 cents per bushel. The court held that there had clearly been a mis-

take and that it had been corrected before harm had resulted from it to any one.

43. A made a contract with B in a sale of cheese for delivery as wanted in September, October and November. Three shipments were made. The fourth order A asked permission to defer shipping pending settlement of bills past due. B responded promptly with a check for the past due amount and A made the fourth shipment of cheese. Later, at the expiration of the time on the contract, A called on B to take out the balance of the cheese, which B declines because he didn't get last lot when wanted. What are A's rights?

A. A is entitled in a case of this kind to make choice of several remedies. He may set aside the amount of cheese yet needed to fill the contract, inform the buyer that it awaits his orders, and then sue for the full amount due him under the agreement, and still remaining unpaid; or he may give the buyer notice that if the goods are not taken promptly they will be sold for the buyer's account to satisfy the seller's lien upon them for the purchase price; then the sale may be held, at public auction, at a time and place of which the buyer has had due notice, and that amount, if any, by which the proceeds of that sale are less than the money yet due under the contract may be recovered by suit; or the seller may accept the buyer's rescission of the contract and simply keep the goods as his own.

44. On December 22 A telegraphed "ship to-day" ten boxes of a certain kind of goods. The telegram is delivered after depots are closed and we write him "telegram received too late for shipment to-day. To-morrow's shipment the best we can do." Knowing A would receive our letter early the next morning in time to stop the shipment if he so desired, and having no further advices from him, we shipped the goods on the afternoon of the 23d. A refuses goods.

A. We think the position of the buyer, A, is well taken in this case. He ordered goods to be shipped on the day of the order. The sellers declined that order, and that was the end of that matter; but the sellers went further and made a counter proposition of their own. This the buyer was at liberty to accept or not as he chose, and he never accepted it, and is not bound. The form of our correspondent's letter, "to-morrow's shipment the best we can do," was such

that A might well suppose they would wait, after sending it, until they had heard from him again. The case would have been somewhat stronger for the sellers if they had notified A that the goods were to be shipped unless he should instruct them to the contrary.

45. On the 13th of October I received a request to tender for export on copper wires, tenders to be opened on November 10. I obtained quotations from several manufacturers here, two of whom stated that the price quoted me would hold good until November 25. One of these manufacturers writes me on the 24th instant stating that he withdraws all quotations made me on the 13th, and in conversation with me to-day confirms this and states that I cannot hold him to the quotations made. How is it?

A. The law will not undertake to enforce a mere naked promise made without any valuable consideration. It is for this reason that persons wishing to have a valid and enforceable option on goods or real estate are in the habit of buying such an option and paying for it. The situation in the case our correspondent puts was this: The option having been given for nothing, good until November 25, remained in force until that time unless it was previously withdrawn by the person giving it or taken advantage of by the person holding it. If our correspondent had ordered the goods at the price named before November 25, and before the offer had been withdrawn, the manufacturer would have been bound; on the other hand, if the manufacturer saw fit to withdraw his offer before it was accepted (as he has done) he could no longer be held.

46. My sister bought a piano on the instalment plan, as per enclosed copy of contract. After about six instalments had been paid the piano company went bankrupt and payments were made thereafter to the trustee. All the principal has been paid, but the trustee now claims that, according to his reading of the contract, interest is payable from the time that the piano was bought until it is accounted for in full on the unpaid acounts. The verbal agreement between the seller and the piano company was that interest was to be paid only on any amount still due by the time the contract should have been fulfilled.

A. The contract enclosed by our correspondent has this

provision concerning interest: The buyer agrees to pay the sum of $300, "with interest thereon at the rate of 6 per cent. on all sums unpaid, as follows: On the execution hereof $10, and $6 in monthly instalments regularly thereafter." We are clearly of opinion that this contract binds the buyer to pay interest on each instalment from the date of the contract to the time when the instalment is paid. The talk between the buyer and seller before the contract was signed is of no importance whatever. Written contracts would be no better than verbal if their plain terms could be varied by evidence of mere spoken words. The buyer should have seen that her wishes concerning interest were made part of the written agreement. Even the most solemn promise or agreement of the seller will not be enforced unless it can be found in the written contract. Construing the writing alone, as we are bound to do, we find that it provides for interest on instalments until they are paid, for this reason, among others.

47. An engraver agrees to furnish a certain number of cuts at $1.75 each. The cuts are of a kind that require "touching up," for which there is to be an extra charge, the sum not to exceed $1 per subject. This charge, as stated, is for "touching up," and is exclusive of the charge of $1.75 per cut. The contract also reads that where the time required for "touching up" does not equal the maximum charge of $1 per cut the amount charged for "touching up" will be correspondingly less. When the work is practically completed we receive a bill for a certain number of cuts at $1.75 each, and are charged for "touching up" $1 per subject.

A. This is a case in which the exact language of the contract is of great importance. It is agreed, in the first place, that the charge for "touching up" is "not to exceed $1 per subject." This may mean either that the average is not to be greater than that or that the charge made against any single subject is not to exceed $1. If the wording is such as to lend itself to the latter construction the total charge must be less than $1 per subject, because it is admitted that some of them were "touched up" at a less expense than $1. It is further provided that if the time required

for touching up does not justify a charge of $1 per cut the charge will be correspondingly less.

48. A wager is made between A and C. B says to A, "Will you give me half of the bet?" which is granted. In case C does not pay his bet to A is A compelled to give B one-half of the amount which he is unable to collect?

A. If A simply promises to give B half the money he expects to collect from a bet or any other source he is not legally bound to keep his promise whether the money is actually paid to him or not. The law does not undertake to compel men to keep all their promises.

49. A sells to B a quantity of merchandise under a contract to have same ready and deliver part of same within sixty days from the date of the order and the remainder to be held in stock by A subject to shipping instructions of B for one year from the date of the order. The goods are to be billed as shipped, the entire quantity to be shipped within one year. Is contract good in case of failure?

A. The only risk of the seller, in a case of this kind, is that the buyer may become insolvent before the due date of his obligation arrives; against that risk there is no protection except care in the choice of customers. If the buyer should go out of the business in which he is now engaged, or if he should be forced out except by the seller, he would still be bound by his contract. There is no condition in the contract, as there might have been, that he is to take the goods only in case he remains in a certain line of business. The agreement is binding upon him from the beginning, without regard to the nature of his business, and even if he is engaged in no business at all.

50. The following is part of contract made by a merchant with a salesman: "You are to receive a commission of 7½ per cent on all goods delivered. Your commission account will be made upon the 25th of each month for the shipments of the previous month." This contract has been in force for almost five years, and it has always been the custom for the merchant to deduct from each month's commission the amount of merchandise returned by customers against the salesman's commissions of that month in which same was returned. As stated above, this method of making up commissions has been in vogue for about five years, and there was

no objection made to it on the part of the salesman. He now objects to deducting commissions on goods returned two months later.

A. The salesman's contention in this case is not tenable. When a court is called upon to construe and enforce a contract its first duty is to find out what the parties meant by their agreement; this being determined, and nothing being found in the contract which is illegal or contrary to public policy, the courts will enforce it. As to the intention of the parties there can be no better evidence than that afforded by their own practice in carrying out the contract. Unless one of the parties has been under compulsion, or has been deceived by the other, he will not be allowed to say that the contract does not mean what he has construed it to mean for the past five years. What one party has always claimed, and the other has always conceded without protest, there being no question of fraud or deceit, is part of the contract as the parties themselves have construed and applied it.

51. A jobber sells to a retailer goods f. o. b. Philadelphia. The goods were made at Chinook. The freight from Chinook to Philadelphia is 20 cents per 100 pounds. The freight from Chinook to Lansdowne is 20 cents per 100 pounds. The freight from Philadelphia to Lansdowne is 7 cents per 100 pounds. The goods were shipped direct from Chinook to Lansdowne. The retailer paid freight from Chinook to Lansdowne, 20 cents, and deducted 20 cents from the bill of goods on payment.

A. Our correspondent does not give us all the necessary facts. The seller agreed to deliver the goods in Philadelphia, and did deliver them somewhere else; the buyer agreed to accept them in Philadelphia and then waived his rights and accepted them at another place. In short, the contract which was made, and which is described to us, was never carried out at all. What was carried out was some substituted contract and we are not told what the terms of it were; therefore we cannot define the rights of either.

52. At 11:10 A. M. on Saturday a telegram was received by us from a party in Texas, making us an offer of merchandise, subject to immediate reply. At 11:15 A. M. we telegraphed accepting the offer. Our telegram, however, did not reach Texas until 7

P. M., and the Texas party refuses to confirm the transaction on account of this delay. Was the purchase invalidated?

A. There was a completed contract in this case, and both parties are bound by it. The moment at which it became completed was 11:15 A. M., of Saturday. That is the moment at which the buyers accepted the seller's offer, and that is the moment at which, in contemplation of law, the acceptance was communicated to the seller. If it was delayed in actually reaching him, or if it never reached him at all, he must look to the telegraph company to make good his loss, if any. He is bound in either case.

53. A offers B for prompt shipment one or two cars of extra choice potatoes at a certain price delivered, subject to prompt wire. B wires on receipt of A's letter: "Accept offer for two cars potatoes; ship four days apart." A confirmed the order and booked the two cars. A shipped one car and there were a number of the potatoes frozen. B sent A a letter making a claim on account of the frozen potatoes. A never answered the letter. B bought the potatoes on January 13 and has been waiting for the second car, and wrote A to forward them, which he fails to do. Who is at fault?

A. There is ample evidence in this case to show that the seller accepted the buyer's order and became bound to fill it. The seller offered either one or two cars upon certain terms; the buyer ordered two cars upon those terms; the seller accepted the offer and began to fill the contract. As soon as this was done, if not before, there was a completed contract binding upon both sides. The seller could not escape his obligation under that contract unless the buyer released him from it or unless the buyer himself was guilty of some breach of the contract. There is nothing to show a release on the part of the buyer; neither is there any evidence of a breach of the contract by him.

54. A person gives his signature in order that another may know his name and address, or for any similar innocent purpose. The person receiving it, or some other, writes over the signature a due bill or promissory note. Is the paper a valid one?

A. If a man makes his signature simply in order that another may know his name and address, a promissory note or other contract written above such name would not be

binding, even in the hands of an innocent holder for value, against the person who had so written his name. The cases in which a person has been held to a contract to which he did not intend to become a party are cases in which he did intend to become a party to some contract.

55. An employe is hired for a term of three months at a salary payable monthly. No new contract is made at the end of that time, but the employe continues in the service as before. This has gone on for nearly a month. The employer says he is no longer in need of the services of the employe. What are the latter's rights?

A. When the employe in this case, having completed his three months of service, enters upon the fourth month with the knowledge and consent of the employer, this is *prima facie* evidence of a new implied contract upon precisely the same terms as the former express agreement. There may be other evidence sufficient to overcome this, but if there is nothing in the case except what is here stated the employe is engaged, and is bound to serve, for another period of three months at the same rate of wages and upon the same terms as before.

56. 1. A lease was executed and nothing said about assignment of same. The lease was assigned to me, and as it contains a renewal clause I want to take advantage of it.

2. If the renewal clause is made one of the conditions of the lease, where is the consideration for the same, or must a special consideration be stated?

A. 1. It is the policy of the law to allow, in the use of personal and real property, the greatest freedom which is compatible with the contract rights of those interested. If a lessee has expressly agreed not to assign his lease or sublet the property that is a contract he can be compelled to observe.

2. If A agrees to do one service for B, or to pay him a sum of money, and B agrees to do several services for A, A's single promise or single payment is a sufficient consideration for all the things B undertakes to do.

57. A, living in the country, hires B to paint his house, making a contract with him "to paint the outside of the house a certain

color, said work to be done to the satisfaction of A." He does this work with the exception of the shingles on the roof over the porch on the front of the house and refuses to paint these shingles, claiming this was not in the contract. How can it be decided?

A. The only way to determine this question is to take the evidence of painters and of those who have hired painters more or less frequently to paint the outsides of their houses. This is so because the words in this contract are not necessarily to be interpreted literally, but are to have the meaning they are ordinarily understood to have in contracts for painting.

58. On a representation that parties made that they had certain contracting work at their disposal, and that they would influence all work they could to us, we made a stock investment through such inducements. As a business proposition we would not buy the stock, and only invested so that our contracting business would be benefited. Not receiving any of their work what redress have we?

A. If A, in consideration of B's purchase of a certain amount of corporate stock at a certain price, agrees to use his influence to have certain work given to B rather than to another, this is a contract which B is entitled to enforce, provided the facts are not such as to make it contrary to public policy. The purchase of corporate stock may be as good a consideration for a contract as any other. As soon as our correspondents had bought the stock in this case, with a clear understanding that work was to be given to them in return, the contract was complete upon both sides, and the other party to it was bound to perform his duty under it.

59. A orders from B, a manufacturer, a specified number of pairs of each size, which are to be held subject to the order of A for delivery. After the order has been placed A decides to make a slight change in the style of some of the shoes and at once consults B in regard to the change. B said he would have to see his foreman, which he did, and was informed by him that the change could be made. The size in which the change was to be made required a new model (last), which A ordered made. B then shipped the irregular sizes but none of the new model, which were necessary with the others for his trade. A claims damage for non-fulfillment of contract.

A. The courts are very frequently called upon to de-

cide whether a sale of goods is entire or divisible, that is, whether simply one contract has been made, or whether there are several contracts embodied in the same instrument. The conclusion at which they have arrived may be stated thus: If a number of articles are sold at the same time, the articles being of different kinds and sold at different prices, and there being no reason to suppose that the buying of one furnished any inducement to the buying of another, then there are a number of contracts and each of them may be enforced independently of the others; but if the articles are bought for a lump sum, or if one is bought to be used in connection with another so that either alone would be practically worthless, then it is an entire contract and the seller cannot claim payment for delivery of one of the articles if he is in default as to delivery of the other or others.

60. Does a verbal contract made in the presence of two witnesses hold good?

A. Some verbal contracts can be enforced through the courts and others cannot, but the question does not in any case depend upon the number of witnesses.

61. A sells B 100,000 yards of cotton goods on contract to be made at 8 cents per yard. The contract includes a 10 per cent seconds clause at ¼c per yard allowance. After the completion of the contract with 90,000 yards of firsts and 10,000 yards of seconds it was found that, say, 45,000 yards of firsts prove to be imperfect and cannot be used for the purpose intended. This is finally adjusted by making B an allowance of 20 per cent, and B agrees to have these 45,000 yards replaced by perfect goods. Does this allowance of 20 per cent. affect in any way the balance of the contract as filled? Should B accept the full proportion of seconds, viz., 10,000 yards, as called for in the original contract?

A. A contract is to be enforced precisely in accordance with its terms unless the parties to the contract have mutually agreed upon some change in these terms. In the case our correspondent puts no objection has been raised to any part of the contract except that part dealing with the 90,000 yards. Any supplementary agreement will be construed as having reference only to this part of the contract unless there is an express provision to the contrary.

62. 1. Suppose a young man, not yet twenty-one years old, buys a piece of real estate and pays a small cash sum down and puts a heavy mortgage on same, can his father or any other person by legal process get it away from him?

2. Also is it legal for a young man not yet twenty-one years old, to buy real estate in his own name or a relative's name?

A. 1. Property, real or personal, belonging to a minor is not liable for his father's debts whether the father is insolvent or not.

2. It is not unlawful for a minor to purchase real estate, either paying cash for it or executing a purchase-money mortgage to secure part of the price. Such a transaction is legal, and it is not void; it is voidable, however, at the option of the minor when he shall have reached his majority.

63. A is a jobber, B a manufacturer. A is not a regular buyer of B's line, but occasionally has a call for articles of B's manufacture and has always obtained them at a reasonable discount. Recently A sent an order to B for goods needed, the order stipulating that the price should be the "lowest jobber's discount." B filled the order without question, but charged the full list price, refusing to allow any discount. Is A liable for the goods at prices billed?

A. If B was not willing to take the price offered by A he might have adopted either of these two courses: (1) He might simply have written that the price offered was not satisfactory and that he declined to ship the goods; or, (2) he might have shipped the goods and at the same time have written A that his price was not accepted but the goods were sent to him with the understanding that if A took them he was to pay a higher price than that named by him. This would have amounted to a rejection of A's offer coupled with a new offer by B, which A might then accept or not, but if he used the goods knowing B's price he is liable.

64. X has been receiving for some time (eight years or more) a weekly newspaper for which he never subscribed, for which he never received a bill and for which he had no use, treating it as he would a mere circular. Can he now be compelled to pay for the papers?

A. There are some cases in which a person may be compelled to pay for a publication which is sent to him regularly, though he may not have subscribed for it. If the pub-

lication has the appearance of a newspaper or magazine which is usually sold, and not furnished gratuitously, if the recipient has no reason to suppose that an exception is being made in his case and the publication sent to him as a present, and if he accepts it from the post office or other institution or person delivering it, then he may be called upon to pay the subscription price even if he has not ordered the publication.

65. A manufacturer offers goods at a certain price. The person to whom the offer is made replies, saying he will take the goods at another price, lower than that named by the manufacturer. No reply was made. Is manufacturer bound to stand by his offer to buyer?

A. If an owner of goods offers them to another at a certain price, and the other replies offering a different price for them, this is a rejection of the original offer. The only subject under consideration thereafter is the offer made by the buyer; if this is rejected, or if it is simply ignored, the whole matter is at an end unless a new proposition is made and agreed to.

66. We are the holders of an irredeemable ground rent. It now underlies three properties, the middle one of which has always been responsible for the collection and payment of the interest on all of them. In the original bond the interest was specifically made payable in Spanish mill dollars; but having for one hundred years been paid in current money, can Spanish dollars now be legally tendered?

A. We are clearly of opinion that the debtor is legally justified in this case in tendering the Spanish coin in payment of his rent. The written document expressly calls for payment in that medium. When the debtor first tendered payment in another form the creditor was at liberty to refuse acceptance of it. If he accepted it the tender and acceptance simply became a mutual waiver, for that time, of the strict letter of the contract; but this waiver by either never would grow into a right upon the other side.

67. B enters into a contract with A by which A sells a cargo of tomatoes to B. In this contract it is expressly stated that, as a further guarantee to the seller, B (the buyer) shall deposit with A (the seller) $100 binding money, which is done by B on signing

the contract. Upon the arrival of the tomatoes a contention arises on the quality, in consequence of which B enters a suit for damages against A. The case is now fourteen months awaiting its turn in court. How does the $100 paid stand affected by the suit?

A. It is provided by law in most of the States that a contract for a sale of goods worth $50 or more cannot be enforced through the courts unless the contract or some note or memorandum of it is put in writing and signed. The contract was in writing and there was no need of "binding money." This transaction was entirely legal, nevertheless. The seller wished part of his money in advance, the buyer was willing to pay it, and it was paid accordingly; that it was incorrectly spoken of as "binding money" is a matter of no importance. The person who paid it must recover it, if he has a right to such recovery, as part of the suit now pending. The whole controversy, all the rights and claims of both parties arising out of this single transaction, must be settled in a single suit.

68. A sells to B his good will, endeavors to influence all his customers to trade with B and leaves a certain amount with B as a special partner during ten years. Is there danger of usury?

A. There is nothing usurious in the contract, and we see no reason from the statement why it may not be enforced.

69. We are buying for one of our European clients goods of American manufacture, and according to agreement we charge in our invoices to him a commission of 5 per cent on the actual cost of the goods. One of the manufacturers of whom we are buying largely for our client allows him directly a sum equal to 5 per cent on purchases. He now claims a credit of 5 per cent; is he right?

A. The allowance from the manufacturer has nothing to do with the buyer nor with his commissions.

70. A sells B 200 dozen of wire screens to be in good condition. Terms, 60 days. B not paying, A waited ninety days before requesting payment. Then B declared the goods were imperfect, offering to pay for all he had sold and return the others, or keep them and pay when sold. A does not dispute the possible imperfection, but failing prompt notice, claims that B should pay in full.

A. If B found that the screens were damaged but made no offer to return them and no claim for damage until more

than three months after the delivery, he would not have much standing in court by way of defense if sued for the original bill.

71. After the interest on a mortgage has been due more than thirty days and not been paid, is it illegal to charge interest on the amount of interest due?

A. To charge and to receive compound interest, if the debtor is willing to pay it, is not illegal, but such payment cannot be legally enforced if the debtor refuses to allow it. It is a just charge in the case described, but it cannot be collected by legal process.

72. Can a person be held on a bond which states that he shall not go into the same business in same city inside of six months or a year after date of bond?

A. Where an agreement not to engage in a particular business is unrestricted as to time and place, the courts will usually not enforce it. But contracts much more burdensome than that cited by our correspondent have frequently been held valid.

73. Has a manufacturer or dealer the right by law to require his customers to sell at a certain stipulated or fixed price the goods they purchase of him, and can he retain any percentage or rebate for a violation of these terms?

A. The courts hold that a manufacturer or wholesale dealer has such a right as our correspondent describes, and that he may refuse to sell his goods to any retailer who declines or fails to maintain the price fixed. It is only when a number of manufacturers combine to coerce retail dealers and to keep up the price of the article in which they are interested that the law interferes with them as being engaged in an illegal conspiracy. Even in that case they are allowed to combine if they have a monopoly conferred upon them by law, a patent, for example, or a copyright.

74. A, a dealer, buys of B, a farmer, a certain quantity of produce on a sample, and pays a sum of money to bind the bargain, and at the same time they agree upon a future date for the delivery of the goods, either by A's going to B's place and inspecting, weigh-

ing and marking the goods, or by B's bringing the goods to A's storehouse and there A inspecting, weighing and marking the same. Before time for delivery the goods were destroyed by fire. Who loses?

A. As we understand our correspondent's case title to the goods had not passed at the time of the fire. If the goods have been ascertained and are known the title has been passed, though the quantity may yet have to be determined. But if A buys of B a certain lot of goods of a given description, so the contract may be fulfilled by a delivery of that quantity taken from any source, then the title does not pass until some specific goods have been selected out from the mass and so devoted to the contract that it is beyond the power of the seller to further dispose of them. If they have not been selected, set apart and accepted, either expressly or by implication, title has not been passed; and the loss will fall upon A.

75. I hold two unpaid promissory notes for A. M. C. for nearly $4,000 cash advanced him as a partner in and business manager of the firm of J. D. & Co., publishers of the ——— ——— and other supposed religious papers. The notes were considerably overdue when I asked for settlement and learned that C. was in Europe. Later C. gave bill of sale to J. D. of his interest, both being aware of the indebtedness. Is the sale legal and will it stand?

A. An insolvent debtor is at liberty to sell his property. The question of the validity of the title by which the purchaser holds, depends upon the good faith of the sale. If the transaction was an honest one, in good faith and for an adequate consideration, the fact that creditors are thereby prevented from reaching the property does not invalidate it. The Statute of Frauds provides, however, that every conveyance or assignment made with the intent to hinder, delay or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands, as against the persons so hindered, delayed or defrauded, shall be void.

76. A stockholder and director of a corporation agrees verbally at a meeting of the directors to a certain arrangement whereby he is to continue in his capacity as department manager at a certain salary and percentage of the profits realized by his department for the term of one year. Has he any right to leave before the expiration of the time?

A. A verbal agreement which is not to be carried out within a year from the time of making it is not enforceable in the courts of many States. In the case our correspondent puts if the year dated from the moment the agreement was entered into it may be enforced, but if the year was to begin some days later the unwritten agreement cannot be enforced on either side. If the contract for services in this case was not valid by reason of the facts stated above, then it was a hiring at will, and either party could put an end to it at any time without previous notice.

77. We have been selling a Western firm one or two tons monthly of pig tin; they have never made an inquiry for any particular quantity, simply asking the price. They wired us on Saturday asking lowest price for tin. We replied as follows: "Tin, 26.30 cents, freight allowed, usual terms; prompt reply." Confirmation of their wire was received by us on the following Monday, which was as follows: "We wired you this A.M. for price of tin. We are in the market to buy from five to ten tons, and hope you can quote us low enough to secure the business." Being an old customer we sent five tons—over double usual quantity. They now claim we should have sent ten tons—were we not justified in limiting our shipment to what we did?

A. The buyer has no valid ground of complaint in this case. If a seller has agreed to furnish goods, and a buyer has agreed to take them, no quantity being specified at the time, then the seller can be compelled to tender, or the buyer to accept, only that quantity of goods which represents the minimum amount sold at a time by houses in the same line of business. If the seller is a wholesale dealer he does his full duty under the contract by tendering the smallest amount known to the trade as representing a transaction at wholesale. If the buyer wishes to have a larger quantity, or if the seller wishes to compel him to take a larger quantity, this must be stipulated in the contract.

78. A made a contract with B to give him the control in this market of a certain article of commerce. B receives a consignment of the goods and gives notes to A in payment thereof. B subsequently discovers that A was not authorized to make any such contract. Can B recover the notes, they not having been negotiated?

A. On presentation of the facts to the proper court, A can be enjoined from negotiating the notes and compelled to hold them subject to the legal decision of the controversy.

79. If in an agreement to sell real estate, stating that "—— and ——, his wife, of the first part, and ——, of the second part, witnesseth," &c., the document is signed only by the husband, of the first part, and the party of the second part (the wife's signature not being affixed in either person or by agent), is the contract a valid one?

A. It is a general rule of law applicable to deeds and other written contracts that if it appears either from a parol stipulation or from the writing itself, that the contract is not to be deemed complete until other signatures are added, it will not, in the absence of those other signatures, bind those who have signed. But if no such understanding can be shown, those signing will be bound even though it appears on the face of the writing that other signatures were in contemplation, except as to dower interest of wife.

80. A offers B merchandise and B orders upon certain agreed conditions as to terms of payment, discount, date and place of delivery, etc., nothing being mentioned as to the person to whom payment is to be made, or by whom billed. Is contract affected?

A. When a sale for future delivery is concluded the question of the identity of the person to whom payment is to be made, or from whom the invoice is to come, is not of vital importance. The seller cannot shift any part of his liability to the shoulders of another.

81. Please say if the United States Supreme Court has ever passed upon the validity of contracts made on the Stock Exchange, the Cotton Exchange, or at a similar place.

A. The Supreme Court of the United States and the various courts in other States have very frequently passed upon the validity of contracts for future delivery made upon stock exchanges, cotton and produce exchanges and boards of trade. The main principles to be deduced from these decisions are the following: That such a contract is valid and enforceable if it is really a sale, and not a mere cover for a gambling transaction; that, if it is in the form of a sale, the presumption is that it is a sale and not an agree-

ment for an illegal purpose; that he who alleges it to be a mere wager must prove his allegation; that the contract being in the form of a sale is to be regarded and enforced as a sale unless it can be shown that both parties to the transaction agreed, either expressly or by implication, at the time the contract was made, that there should be no delivery of goods, but a mere payment of differences.

82. A, an out of town firm, buys of B, a New York city house, by sample shown in B's office, a lot of goods for future shipment at a stated price on four months' open account. B mails A a bill for the goods and holds same subject to his shipping orders. Three weeks later A returns to B the bill, stating that he has no use for the goods. Can A be made to pay for the goods?

A. If the contract was in writing, or any note or memorandum of it signed by A, he is liable. Otherwise he is not liable unless the goods were of less value than fifty dollars. In case A is liable, B may continue to hold the goods subject to his order and sue him for the contract price.

83. "If the factory of the seller or the print works of the buyer should be closed by a protracted strike, lockout, or any unavoidable casualty, the uncompleted part of this contract may be canceled for the time the works are shut down, by the party whose works are stopped, the seller to deliver and the buyer to take all goods that may be made at that time or in process of manufacture." When the time for the first delivery arrived the manufacturer delivered no goods, claiming that he could get no weavers.

A. There is nothing in this contract, so far as it is quoted by our correspondent, which would release the seller from his obligation on the plea that "he could get no weavers." It is not stated that his inability to get weavers has arisen from "a protracted strike or lockout," and his failure to secure the necessary workmen is not, in itself, an unavoidable casualty. The contract binds the seller to deliver the goods unless his works shall be closed by a protracted strike, lockout or some unavoidable casualty. A clause of this kind is always strictly construed.

84. A orders $10,000 worth of imported woolens from B, C & Co., at terms to be 6 per cent, ten days, sixty days' dating. B, C & Co. sent a confirmation of the order, with those terms marked

clearly upon it. When the goods are delivered up to $5,000 B, C & Co.'s credit man declines to deliver more without A's anticipation of bills not due, which A declines to do, claiming that B, C & Co. agreed to deliver all the order on the terms of 6-10—60; that he would pay bills when due, but not before, and threatens to hold B, C & Co. to their contract.

A. There is a written contract in this case containing nothing contrary to law or public policy, and there is no reason why A, the buyer, should not be allowed to enforce it, by a suit if necessary. Having sold goods on certain terms of credit the seller can be compelled to deliver them in accordance with those terms or to pay any loss which may come upon the other party to the contract as a result of the seller's breach. His duty is, of course, to deliver the whole $10,000 worth of goods; a delivery of any less quantity is not a complete compliance with the contract, but only a partial compliance.

85. We bought from a party in ——a car of seed at a stipulated price, which was confirmed by the seller to us as being per 100 lbs. After five days, after the deal had been closed, the seller finds that he has made a mistake in all his telegrams and letters in that the price offered and accepted should have been per bushel instead of per 100 lbs. He refuses now to fill the contract at the stipulated price, claiming that it was an "apparent" error. Can he abrogate the contract?

A. The letter of our correspondents contains much that is unnecessary to print. Upon a consideration of the whole case there is no doubt whatever that our correspondents are entitled to have the goods at the price agreed upon or damages for the seller's breach of contract. A contract may be rescinded on the ground of mistake when the mistake is mutual; it may also be rescinded if the mistake is made by only one party and the other is certain that a mistake has been made but is desirous of taking advantage of it. Neither case is presented here.

86. We placed an order with a cotton mill on May 23 for a certain quantity of cloth, to be delivered one-third during October, one-third during November and one-third during December of this year. The quantity that we purchased was a certain number of pieces which the mill calculated at that time would be their full

production up to the end of December. You thereby see that our order provided that "in case of delay arising from strikes, lockouts, or other unavoidable casualties, your delivery of goods is to be proportionate to the ability of the mill to produce the same." When the mill notified us of their troubles and probable shortage we offered to take whatever goods were short on the contract as soon as they could produce them. Under the circumstances has the mill a right to cancel any shortage?

A. We are of opinion that the mill is entitled in this case to cancel so much of the order as it finds itself unable to fill by the end of December, provided the mill has honestly tried to make full deliveries and has been prevented by strikes, lockouts or other casualties named in the paragraph quoted by our correspondents. It is true, as our correspondents say, that the contract calls for a certain number of pieces, not for the full production of the mill, and that the mill would have no right of cancellation except for the paragraph already referred to. The effect of that paragraph is twofold: It gives the mill a right (1) to delay the deliveries promised for any month, and (2) to cancel a delivery, or part of a delivery, altogether if it cannot be made before the end of December. The main part of the contract does not contemplate any delivery later than December thirty-first. There is nothing here to show that the seller is entitled to tender, or the buyer bound to accept, any goods later than December.

87. A engages three salesmen at $2,000 per annum, under a written contract, for three years. At the expiration of the first six months A comes to B, C and D, the salesmen, praises them and congratulates them on their success and volunteers to advance their salaries. The men naturally accept the increase, whereupon A declares the acceptance to be a violation and nullification of the old contract and discharges them. Is there any redress for this action?

A. Aside from the question of fraud, which vitiates all agreements and contracts into which it enters, the original contract, in the case put by our correspondent, was rescinded, if at all, at the request of the employer. The consideration which he offered for the rescission was a new verbal contract, which was not pending because not written, and which was, therefore, not a good or valid consideration for any

promise. The original written contract between A and his salesmen is still good.

88. Some months ago A sold to B a lot of dried fruit, which was resold by B to A, say ten days ago, at an advance of 3 cents per pound. The goods were billed back to A on the original weights, and on examination he finds an error of 600 pounds, there was this overcharge in the original bill. Who makes the correction?

A. It is a general rule that where money has been paid erroneously in consequence of ignorance as to facts which, if known, would have prevented the payment, the money so paid may be recovered. The case put by our correspondent falls within this rule. The fact that the goods were originally sold and the weights determined by A does not estop him from disputing the accuracy of the weights upon the second sale, as no fraud is alleged and B has suffered no irreparable injury.

89. A sells to B ten lots of ground at $1,000 per lot, and takes $1,000 cash, balance mortgage at 4 per cent interest, due in five years from December 5 last. In the mortgage is the following clause: "With the privilege to the party of the first part (B) of obtaining a release of the within mortgage for any of the lots covered thereby, on payment of the sum of one thousand dollars in cash, and the party of the first part hereby stipulates and agrees to pay seven hundred dollars on account of said principal sum every six months." Since above sale was made $2,000 has been paid, and two lots released. Must B pay $700 at end of six months?

A. Every contract is to be construed so as to give full effect to the intentions of those who are parties to it. By the mortgage under consideration, B placed ten lots in pledge to be held for the payment of $9,000, or any part of it. He agreed, as a part of the consideration, to pay $700 toward the principal at the end of each six months; then, as a privilege to him, it was stipulated that upon the payment of $1,000 he might have any one of the lots released from the operation of the mortgage. We do not find anything in the agreement to indicate an intention that this privilege might be taken advantage of by B as a performance of his stipulation to pay $700 semi-annually upon the principal.

90. I bought of a manufacturer a bill of goods and ordered the same to be sent to one of my customers on my account, with the understanding that in case my customer should buy of the manufacturer direct I would get a commission; am I entitled to it?

A. The contract here described is not one which needs to be in writing in order to be valid. If the fact of the agreement and of the sale can be proven our correspondent will be entitled to the commission agreed upon.

91. We selected some goods from a commission house, which, being but a small amount, and to be made up as samples with the intention, if satisfactory, to buy more, the house bills them on memoranda. In the mean time we buy some goods of the same house on which they give us the usual terms with the dating ahead agreed on.

A. Our correspondent having made two different purchases we do not know of any rule under which he can claim that the stipulations in one contract of sale shall govern the other, in which they were not inserted. In the absence of special agreement a purchaser is bound to pay cash upon delivery of the goods, and is entitled to no discount.

92. A manufacturer (A) writes a dealer in manufacturers' supplies (B) as follows: "You may enter our order for seventy-five tons of your goods at $——. Goods to be delivered at Jersey City, lighterage 50 cents per ton, you guaranteeing price." Before goods were delivered A writes: "Am offered same quality at $1.25 ton less; can you meet price?" What does "guaranteeing price" mean?

A. The expression "price guaranteed" means that up to the date of delivery, or to such further time as may be specified, the guarantors will not sell at lower rates, or if they do, will give the buyer the benefit of such reduction. It cannot be understood to mean that the order is to be void if any other person shall offer to the buyer similar goods at a less price.

93. We contracted for delivery in the same year for three carloads of goods and made delivery of two of the cars as specified in contract, while the delivery of the third one was at our wish postponed until January of the following year. The car was not shipped in January, but in August of the same year we wrote the buyer that the market was getting short and that he had better give us shipping instructions, to which he replied that the car due him was all he

required; we did not regard that as instructions to ship, so never have. The market has advanced 100 per cent; are we liable for the goods?

A. The unfulfilled part of the contract in this case, as amended by the mutual consent of the buyer and seller, called for the delivery of a car load of goods in January. The seller failed to make this delivery, and this fact gives the buyer a good cause of action. The amount which he is entitled to recover is the difference between the contract price and that at the time and place agreed upon for the delivery —in this case, the last day of January. He cannot take as the basis of his claim the price of the goods at the time when his suit is begun or at any time other than that when delivery was due.

94. A makes a contract with his employe, B, for one year. Before the time is up C enters A's business as general partner. Both continue the business, B remaining their employe, while nothing is said to him about the contract. Is the firm holden?

A. As a firm is not liable for any obligations assumed by its members before the partnership was formed, so an incoming partner does not become liable on contracts made before he was a member of the firm. The fact of his being a member is no evidence that he authorized expressly or by implication any contract made before.

95. A contracts to loan money to B & Co. "at such times and in such amounts as they may need in their business, at the rate of 8 per cent per annum." If A loans B & Co. $10,000 for six months, how much interest should B & Co. pay to A when the note matures? A claims all due when loan is; B at end of year.

A. The claim of B & Co. is that under the contract the interest on any sums borrowed is due only at the end of the year, and therefore the interest due on a note for $10,000 payable at the end of the first six months, instead of being $400, would be only $385.21, as they reckon it, if then paid, because the $400 is paid six months before it is due. This is all wrong. The term "discount," as applied to the interest, on borrowed money or the cashing of negotiable securities, does not carry the meaning it has in treatises on numbers.

96. The goods named in contract were shipped by several vessels and three marks were shipped. Upon arrival here one of these marks is found to be inferior to the standard quality called for (about one-third of the whole). The broker has given his opinion that the quality is a certain percentage below the standard named in contract. The question at issue is this: The buyer claims that he is entitled to an allowance sufficient to permit him to sell the jute delivered and buy a similar quantity of the required quality.

A. The contract is a sale to arrive and hence is executory and not an absolute agreement to deliver. The goods having arrived, the only obligation of the seller is to tender the delivery. The right of the buyer is to accept or reject, and he can claim no damages for failure of quality. If the buyer wishes to take the inferior quality at a reduced price, the terms are subject to an agreement between the parties with no obligation on either side.

97. A sells his stock of merchandise to B at its marked cost and agrees "hereafter to keep none of said goods in stock." Is such an agreement legally binding on A?

A. Within certain limitations contracts of this character have been recognized as legal, and a breach of the covenant has been made the warrant for damages.

98. In July I contracted for a car of California prunes on bag basis of 1⅞c for 50s to 90s, with an additional charge for 40-50s and 30-40s; guaranteed against decline in price as named by any reputable packer. The price of 50s to 90s has declined, while there is little difference on 40-50s, but a sharp advance on 30-40s. I claim 30-40s at the contract price with benefit of the decline on the other sizes.

A. There is no merit at all in the claim that a buyer under a contract of this kind must pay a higher price than his contract names in any case. The amount named in the contract is the highest he can be asked to pay even if all the goods advance in price before delivery; the seller, on the other hand, agrees to make good to the buyer any decline in price, that is, to demand of him, if the market declines, a lower price than that named in the contract.

99. A salesman takes an order for sundry articles and leaves

with the party who gives the order two samples. The terms not being acceptable to his employers they propose other terms to the party, which are refused by the latter. Is the house liable?

A. If the order is accepted in such shape by the salesman that it would be legally binding if the principal had been in his place, then the employer is bound to deliver the goods. The measure of damages for a breach of the agreement to deliver is the difference between the price agreed upon and what it would cost to purchase the goods elsewhere.

100. I made a contract with a carpenter to make alterations and repairs, half the money to be paid when a certain amount of work was done, the balance on completion of contract. In the meantime he ran in debt for lumber and other material for the work, did not pay some of his men, and also contracted debts in my name without authority and does not finish his contract, as there was unfortunately no limited time. Am I liable for these debts?

A. Those persons who performed labor or furnished materials for use upon the building have a valid claim against our correspondent for so much money as was due the contractor and unpaid at the time when notice of their lien was filed. The Lien Law provides that in no case shall the owner be liable to pay, by reason of all the liens filed, a greater sum than the price stipulated in the contract and remaining unpaid at the time of filing such lien, or, in case there is no contract, than the amount and value of such labor and material then remaining unpaid.

101. I sell to arrive 1,000 bales of merchandise to be equal to a well-known mark, say "X Y Z." On arrival it is found to be inferior; the buyer claims that I must give him the 1,000 bales equal to the mark guaranteed.

A. The courts will not require in such a case a specific performance of the contract, but when delivery is guaranteed by the seller will award the purchaser in money the direct damage he has sustained by the breach of the contract. But if, instead of a guaranty to deliver a certain quantity of goods of a well defined value, the seller has simply made "a sale of goods to arrive" in the ordinary way, then all he can be called on to do is to tender the goods on arrival.

COPYRIGHTS.

1. I hire a photographer to go from the city to my place in the country; I pay the price he asks for his time and the price he asks for the mounted photographs which he takes there. Some of these are excellent pictures of my dog in various active positions. He says he shall copyright them in his own name. Are not these pictures my property in every respect?

A. We think there is no doubt that our correspondent is the only person entitled to a copyright in this case. The United States Revised Statutes gives this right to the inventor, maker or owner of the picture. It is well settled that the employer is the owner of literary or artistic work done by a person in his employ, as a part of the work for which he is paid.

2. A firm in France having had their engravings copyrighted in said country, but not in the United States, the engravings have been photo-lithographed by a firm in this city. Can the French firm put a stop to it?

A. The U. S. copyright law applies to a citizen or subject of a foreign state or nation that permits citizens of the United States of America the benefit of a copyright on substantially the same basis as its own citizens. As France extends its copyright privileges to citizens of the United States, the firm could have protected the pictures by copyrighting here. It is too late now.

3. 1. An article appears in a daily paper whose composition is peculiarly that of the author, but whose thoughts he has taken from many sources. Does he violate the moral rights of any one in omitting to say that the thoughts are not his own but that they are those of A, B and C?

2. If I buy a copy of a newspaper how far will the moral rights of the publishers permit me to use or employ its contents without obtaining their consent?

3. If I buy a copy of "Tent Life in the Holy Land" how far will the moral rights of the author permit me to use or employ it or its contents without obtaining his consent?

4. When the copyright of a book has expired and is not renewed, has any one the moral right to republish it without the consent of the author or his heirs or the publisher, or all of them?

A. 1. The general rule is that thoughts, belonging to the immaterial and intangible, are not subjects of moral or legal property. When formulated in shapes, words, or pictures, by human arts of writing, painting or any other art, they may become moral and legal property. The publisher of thoughts gives them away, with intent to have them go into other minds, whence no human power can recover them.

2. We assume that this question relates to non-copyrighted newspapers. Where copyright laws exist and an editor or author publishes, without copyright, all persons have right to regard him as giving his publication to the world for their use.

3. If you buy a copyrighted book, you may make any use of it and its contents which does not injure the author pecuniarily or otherwise.

4. The property of an author is not created, it is only defended, by copyright laws; just as the owner's property in his watch is not created, only defended, by penal laws against theft. If an author has any moral rights in the book he has written, before he takes out copyright, he has the same rights after the copyright laws cease to protect him.

4. I have a manuscript which I wish to copyright before presenting to a publisher. How shall I do it?

A. The person wishing to secure a copyright is required simply to send to the Librarian of Congress, Washington, D. C., not later than the day of publication (he may send it earlier than that day if he chooses so to do) a printed copy of the title of the work. If it is a book or other work which is to have a title page, a copy of that title page will be sufficient. In other cases the title must be printed expressly for copyright entry, with the name of the claimant of the copyright, &c., &c.

5. I am writing a book which I expect soon to have ready for submission to publishers. In their reply they may possibly claim that they cannot make me any kind of a proposition for the publication of the book by them until I submit to them my manuscript

for examination. Would the necessary precaution be to copyright my manuscript beforehand, and only then submit it to publishers?

A. An author's best protection against such fraud as our correspondent fears is to deal only with reputable publishers. The main purpose of the copyright law is to protect from piracy books which have once been published with the author's consent. If an author publishes his book and does not copyright it he is understood to have dedicated it to the public and anyone who wishes to publish it upon his own account thereafter may freely do so. But so long as an author keeps his work in manuscript, not publishing it himself nor authorizing any other person to do so, he is sufficiently protected at common law.

6. Please inform me the full meaning of "All rights reserved," when referring to a publication.

A. The copyright act, as amended, gives to authors the privilege of reserving the right to translate, dramatize or to make such other use of their own productions as they may deem to be best for their own interest, "and authors may reserve the right to contract and transfer all title and interest, in whole or part, for whole or part time."

CORPORATIONS.

1. 1. I had 1,000 shares of preferred stock issued to me in a coal company in return for services rendered said company. In case I wished to transfer said stock for a cash consideration would it be a legitimate transaction, for the reason that my buyer expects to derive the same results as does the investor who sends his subscription for stock direct to the company? From appearances I am inclined to believe that they would not treat the face value of my stock on the same equality as they would such stock as was bought from them direct and for which cash was paid.

2. If a stockholder should subscribe for an amount of shares in this company what liability is there attached to the same by the company issuing the same, and must they be able and willing to prove to any investor all claims that they make which induced the investor to buy their stock?

A. 1. The capital stock of a corporation is regarded by the law and the courts as a trust fund for the payment of

corporate debts. Accordingly, when a corporation reports that it has a capital of so many dollars its creditors have a right to assume that it has that much in cash or in property or in the results of services rendered to it. Of course it makes no difference whether the corporation sells its stock for cash and uses the cash in the purchase of needed property and in payment for services actually rendered, or whether it exchanges its stock directly for property and services. But if stock is exchanged for property or for services only a fair price must be paid in either case, and the property and services must be such as the corporation actually needed.

2. If the officers of a corporation induce any one to subscribe for its shares by any kind of deceit or misrepresentation they render themselves personally liable to him for any loss he may sustain by purchasing stock in reliance upon the truth of such misrepresentations.

2. A is an employe in a stock company situated in the State of New York, and is also one of the incorporators of said company. Now, is there no responsibility resting upon him in case of failure, &c., on account of his signature being attached to the certificate of incorporation?

A. The certificate of incorporation must be filed with the clerk of the county and a certified copy filed at the office of the Secretary of State. All the stockholders are liable for the debts of the corporation until the capital stock is paid in.

3. Would it be legal for one person to hold both offices, president and treasurer, of a business corporation organized under the Limited Liability law?

A. The corporation may be required by law to have a president, secretary and treasurer, but we know of no reason why two of these offices may not be held by the same person.

4. An incorporated company own a patent on a machine which cost them $3,000 to perfect, and which is represented by a full sized model, facsimiles of which they value at $55. The question is, must or can this model be put among the company's assets at a

valuation of $3,000, or does it merely represent $55, plus cost of extra finish?

A. The proper way to represent a company's assets is to put down each article at its market value without reference to its cost.

5. Is not a company legally bound to furnish its members with an individual accounting, if so requested?

A. We do not know any law which makes it compulsory upon a company such as that referred to by our correspondent to furnish its members with an individual accounting upon request. When any member thinks that he has a valid claim against such a company he may, of course, bring a suit and in that way compel an accounting.

6. Please answer whether an alien is qualified to hold a position as trustee of a church, or in any other way. I would like to have a full explanation on this point, as an objection was taken recently to a man nominated for that position on account of his being an alien.

A. The general law applying to religious corporations provides that each of such corporations shall elect any number of discreet persons of the church, congregation or society, not less than three nor exceeding nine in number, as trustees. Aliens are not prohibited by this law from serving as trustees. Laws, however, vary in different states.

7. Can a stockholder, owning one share of stock in a corporation, demand to see or examine the books? If not, what is the requisite amount to make such a demand?

A. It is provided by the statutes of some States that "within thirty days next before the annual meeting of the stockholders the record of the proceedings of the board (of directors) shall be open to the inspection of three or more stockholders holding together one hundred shares of capital stock.

8. Please give us the law governing the following: A church by subscriptions acquires a new organ. It is proposed to give the old organ to another church. Have the board of trustees of the church power to give it away?

A. The trustees of most religious societies have such

control of the personal estate that such action on their part would be within the scope of their powers.

9. Is the manager of a corporation an officer? The manager is elected by the trustees. Is an answer to a complaint, sworn to by the manager, as proper and legal as if sworn to by the president or secretary?

A. Generally those only are considered officers of a corporation who are so denominated in its constitution. Service of a summons and complaint may be made upon a domestic corporation by delivering a copy to the president or other head of the corporation, to the secretary or clerk, to the cashier, the treasurer, or a director or managing agent. It is also provided that the verification of the answer to such complaint, in the case of a domestic corporation, must be made by an officer thereof.

10. In a recent decision by Judge Wallace (Anderson, Receiver, v. Kissam et al.) it appears that "a bank president or cashier has no implied authority to bind his corporation to negotiable paper made for his own use; and if it appears upon the face of the paper that it is payable to the individual who has made it in an official capacity, the obligation is nugatory and no purchaser can enforce it." Bank officials, like other business men, are often investing money and sometimes require loans for perfectly legitimate purposes. But what shall the lender (say in New York) safely accept or properly demand of the borrower (say in Chicago) in payment of any loan? Must the borrower, because he is the president of a bank in Chicago, remit currency or go to another bank and buy exchange? Would the lender be safe in accepting in payment a draft drawn by the cashier of the bank of which the borrower is president, said draft being drawn to the order of the president personally and by him indorsed to the lender?

A. The principle underlying the decision in Anderson vs. Kissam is one which courts have taken cognizance of before. It is, briefly, that a purchaser of commercial paper which shows upon its face that it was made by an agent for his own use, cannot obtain any title from it as against the principal unless he can show that it was made upon due authorization. He cannot rely upon the implied authority of the agent to make such paper in the ordinary business of the principal. If he can show that the principal knew of

the agent's action and acquiesced in it, or that he might, by reasonable diligence, have known of it, the holder of the paper will be protected. One who takes such paper is put upon his guard by the face of the paper itself, and his best protection would be to insure himself by inquiry that the maker of the paper was duly authorized. If the lender should, as our correspondent suggests, accept a draft drawn by the cashier of a bank of which the borrower is president, the draft being drawn to the order of the president personally and by him indorsed to the lender, the latter would probably be protected. In the absence of a legislative prohibition, there is no rule of law which prevents the making of a loan or discount to an officer of the corporation making it.

11. An incorporated company at this place built an opera house costing about $40,000. When finished we found ourselves in debt $15,000. We applied to the Legislature for authority and got the authority to issue that amount in preferred 6 per cent stock, to be paid out of the income. Some of our board contend that this preferred stock is entitled to a vote in the election of directors.

A. Unless there was something in the agreement with the holders of the preferred stock to forbid it, they have the same rights in the management of the corporation as any other stockholders. In the case of Williston vs. the Michigan Southern Railroad (13 Allen, 404) where the plaintiff was an owner of preferred stock, the principle was announced in these words: "The plaintiff, as a stockholder, is entitled to participate in the management of the company, and the corporation debts are created by officers and agents in the election of whom each of his shares has a vote."

12. I have been for over three years a holder of bonds and stock in a company incorporated here about four years ago. Its bonds were issued to the amount of $400,000, its stock to double that amount. About half the bonds and stock were given for patents owned by parties in England, the remainder of the bonds were sold and the stock distributed to the purchasers, the position now being that about 12 per cent of the stock is held here, the balance by the English projectors and their friends. Thus far I have had no notice of any annual meeting, nor have I seen (until a few days ago) any statement of the company's affairs. Last week I was informed that

the company were about to place a mortgage of $100,000 on their factory (the bonds mentioned above are unsecured obligations). On calling at the company's office I was informed that such was the case; that the annual meeting had been duly advertised and that there was no intention of calling a meeting of stockholders here regarding the mortgage scheme, because they were in so hopeless a minority that they could do nothing to hinder it. The accounts I then saw show that about the whole amount received for bonds sold has been invested in the factory, which could apparently be duplicated for half the cost. The annual meetings have been advertised in an obscure evening paper and have consisted of the five trustees, two of whom hold one share each. Will you please inform me:

1. Is the notice to stockholders sufficient?

2. Can this mortgage be placed on the property without consulting the stockholders here?

3. Can the stockholders here have an auditor appointed to examine the accounts?

A. 1. The annual meeting of stockholders in such a corporation, for the purpose of electing officers, shall be held at such time and place as shall be directed by the by-laws, and public notice of such time and place shall be published not less than ten days previous thereto in the newspaper printed nearest to the place where the operations of said company shall be carried on. (Different in some states).

2. Such a company may give a mortgage to secure any debt contracted by it in the business for which it was incorporated, provided the written consent of a majority of the stockholders owning at least two-thirds of the capital stock shall first be filed in the office of the Clerk of the County where the corporation has its principal place of business, and also in the office of the Clerk of the County wherein the goods or chattels on which the mortgage is given are situated. A mortgage cannot be given for any purpose other than the one here set forth. (Differs in some states).

3. Upon the written request of any person or persons owning 3 per cent of the capital stock, the treasurer of the corporation shall make a statement under oath embracing a particular account of all its assets and liabilities, in minute detail, and deliver such statement within twenty days to the stockholders demanding it. (Different in some states).

13. A railroad company issued debenture bonds due April 1, 1908, but convertible into stock of the company at par up to April 1, 1903. Holders of a certain amount of the bonds neglected to present them for conversion before the date stated, and have now petitioned the railroad company to waive the limitation and issue stock to them. Has the railroad company any right to waive this limitation?

A. An extension of the time of conversion in this case would be a new contract altogether. It could only be done by the same authority under which the original contract was made, if that authority still continues, or by some individual or board authorized anew to enter into a contract of this kind; in either case there must be a new consideration, reasonably adequate, moving towards the corporation. Directors can be enjoined from binding the corporation to a contract upon no consideration or upon a grossly inadequate consideration. The precise point raised by our correspondent seems never to have come before the courts for decision. But all contracts looking to a conversion of bonds into stock, or of stock into bonds, are very strictly construed as against the holders of the stock or bonds.

14. A manufacturer having turned his business into a joint stock company and as yet owning all the stock himself—only a few shares standing nominally on the company's books as belonging to friends—finds after a time that the business needs more capital. Thereupon he agrees to sell a portion of the stock to outside parties for cash, stipulating that the money so obtained shall all be put into the business—that is to say, shall be at once expended in purchasing new machinery and in repairs and improvements, which is done accordingly. How is the transaction properly to be brought into the company's accounts?

A. The transaction will be properly brought into the company's accounts by the following: The party who sells should surrender and cancel shares of the capital stock equal to the number to be issued for the cash to be received, and his account in the stock ledger be charged with the same. Then charge the sum of such shares to an account or accounts representing property, such as "Real Estate," "Machinery," "Mdse.," &c., and credit the same to "Capital." This makes an equal reduction of the capital and of the nominal value of the assets. Credit the cash received from

the incomers to capital; this restores capital to its original sum. Then issue stock certificates to the new stockholders for the shares their respective payments entitle them to, and credit the same to their respective accounts in the stock ledger.

15. Has a president, vice-president and secretary-treasurer, three officers holding two-thirds of the stock of a corporation doing a business of $70,000 per annum, the right to vote themselves $2,400 per year each as salary, when the secretary-treasurer only calls at the factory every two weeks to sign checks, and the president and vice-president only meet twice a year, and the company pays no dividends to the stockholders?

A. There is no reason to suppose that the courts would sanction such a proceeding as our correspondent describes if their attention were called to it. These principles have been legally settled in some states. Officers cannot fix their own salaries unless expressly authorized to do so; if they are so authorized there must be no fraud, actual or constructive, in the matter; even if a body of officers are expressly empowered to fix their own salaries this will not allow an officer to vote when the question of his remuneration is up; if his vote is needed to fix his salary at any given amount, and is cast, the action is always voidable and sometimes absolutely void; even if an officer presides at a meeting which fixes his salary, though he does not cast a vote himself, the action will be void; finally, any salaries which appear to a court of equity to be higher than a prudent man would be willing to pay for the same services will not be allowed if any stockholder can be found to object to them.

16. The secretary of a domestic corporation who is designated to issue and sign, together with the president, stock certificates and attend to the proper transfer of same, finds that a few days before the annual meeting he will be called on to transfer several certificates of the corporation that have been sold and properly indorsed to other individuals. This stock, which goes into new hands, will be probably voted against his interests. He will have no rightful reason to refuse issuing new certificates, but in case he does refuse what course would the parties have to take to get the stock transferred in order to vote it?

A. If a corporation refuses to issue a certificate or reg-

ister a transfer by its proper officer or officers, when the person demanding such certificate or registry has a legal right to do so, that person may have a mandamus to compel the officer to do his duty, or he may apply to a court of equity for a decree for allowance of registry, or he may bring a suit at law for damages, as for a conversion of his stock.

17. Under the rules governing a cemetery association controlling a cemetery under the auspices of the Catholic Church, it is generally understood that the deceased must be a member in good standing of the Catholic Church at the time of death to be allowed to be buried in the cemetery. A having purchased and filed a deed of a burial plot in a Catholic cemetery contends that he can force the association to allow him to bury a person in said plot who was not a member of the Catholic Church at the time of death, or who was not a member in good standing, and that the law will uphold him in his action, as it gives no cognizance to a religious body, and he is being deprived of his rights because of not belonging to such a society. B contends that A knew at the time of purchase of the rule governing same, and that it is one of the considerations of the contract that a person to be allowed to be buried in said lot must be a member in good standing at the time of death, and when he leaves the Catholic Church or ceases to be a member in good standing he is not fulfilling the contract and loses his right to be buried in said plot. Can you cite a precedent?

A. One who enters into the transaction commonly called buying a cemetery lot does not, in fact, take absolute title to any real estate; what he gets is simply a right to use a particular piece of land for certain definite purposes, subject to the reasonable rules and regulations governing the matter at the time. The courts will, of course, take sufficient notice of a religious body to hear and decide any suit to which such body may be a party. With regard to the special point raised by our correspondent, the courts have on several occasions decided as follows: "The holder of a receipt for the purchase money of a lot in a distinctively Roman Catholic cemetery is subject to the restrictions of the church excluding those from burial who are not in its communion." It has also been held that "a person who purchases the right of sepulture in a Roman Catholic cemetery takes it subject to the conditions that the person who

shall be buried under it shall have died in communion with the Roman Catholic Church, which question is to be determined by the ecclesiastical authorities, and not by the civil courts."

18. A B is director in an incorporated company, whose charter requires a director to be a stockholder. A B assigns or transfers his stock certificate in blank, or to C D, trustee, and hands same over to C D, trustee. Would it be proper for A B, under such conditions to continue to act as director?

A. As long as he is a stockholder of record there is no legal objection to his position as director.

19. At the annual meeting of an incorporated company representing over one million of dollars, the meeting was called to order by the vice-president of the board of trustees; the secretary and treasurer being vested in one person of the board of trustees, proceeded to make his report, after which directors or trustees were elected, committees appointed, and the business of the meeting declared closed. When about to adjourn, the minutes of the meeting were called for, with a request that they be read. It was then ascertained that they had neither chairman nor secretary nor any proper minutes of an annual meeting. The secretary of the board of trustees said he would write them up and put them upon record and have them approved of at the next annual meeting. The gathering then adjourned. What I wish to know is whether a company managing its business in this manner can be considered a safe and reliable company?

A. Unless the by-laws or articles of incorporation provide that the president (or in his absence the vice-president) of the company shall preside at the annual meeting, it was clearly out of order for him to assume the chairmanship, or for the secretary of the company to act as secretary of the meeting, without due nomination and appointment. Nor can the minutes of one annual meeting be approved at the next, as the minutes of a board at one meeting may be read and approved at a succeeding session, since an annual meeting is not a continuous body and when it adjourns it is sine die and its functions are ended. But the want of proper parliamentary order does not render the proceedings of a meeting illegal if unanimous consent is given to the method of procedure. And in accepting the vice-president as chairman and the secretary as the scribe without a formal elec-

tion, no violence was done to the interests of the organization.

20. Please give me your decision about the following: A is a stockholder in a mining company incorporated. To sell and reorganize a new company with a larger capital, is it not necessary to buy in all the shares of the existing company, or is a majority of the whole capital stock sufficient to reorganize a new company?

A. The law governing corporations formed for manufacturing, mining, mechanical or chemical purposes provides that whenever any such company shall desire to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, or for extending or changing its business, three weeks' notice of such meeting shall be given to each stockholder. The notice must state distinctly the amount to which it is proposed to increase or decrease the capital, and the business to which the company is to be extended or changed. At the meeting a vote of at least two-thirds of all the shares of stock is necessary to increase or diminish the capital stock, or extend or change the business. However, the laws vary somewhat in different states.

21. Please inform me what is the custom in this country regarding the minutes of meetings held by the directors or others connected with banks, companies and other institutions and societies. Ought the said minutes to be written out clearly in a minute-book for the purpose and signed after each session by the chairman and secretary of the meeting, or is there no fixed custom, each institution being permitted to pursue its own course?

A. The rules and by-laws of each banking or other institution determine the care with which the minutes of its meetings are to be kept. We find that the practice in one of the best managed banks in the city is to keep the minutes very carefully in a special minute book. They record the time of the meeting, names of all present, and the name of the presiding officer. They contain also a complete record of every item of business transacted, and contain the name of the mover and seconder of each motion, including the final motion to adjourn. They are signed by the secretary of the

meeting. The first business at each session is to have the minutes of the previous session read and approved.

22. Permit me to ask your views upon a subject often discussed among business men, viz.: Is it morally and legally right for the president of a corporation to receive the same fee which is paid to the directors of the corporation for attending their meetings, it being his business to preside at the meetings, and receiving a salary therefor?

A. It is no more the business of the president to be present at every meeting of the board than it is of each and every director. The use of a "punctual fund" has often secured a quorum of directors, when without such a disbursement the meeting might have proved a failure for want of the requisite number. The president of a corporation is usually chosen from the directors, so that he is a director as well as an officer; but if not, and any whose duty it is to be present is paid a little sum to secure his prompt attendance, the president is as much entitled to the consideration as any of the board.

23. 1. A stock company, organized for manufacturing purposes, with a capital of $10,000, divided into one hundred shares of $100 each, in order to get a start, sells its shares for $25. Now if I purchase at that price can I under any circumstances be compelled to pay the other $75, as I would if I had bought agreeing to pay $100 in installments?

2. What does the word "limited" mean when added to the name of incorporated companies?

A. 1. Section 1,082 of the Iowa code provides that "neither anything in this chapter contained, nor any provisions in the articles of incorporation, shall exempt the stockholders from individual liability to the amount of the unpaid installments on the stock owned by them, and executions against the company may, to that extent, be levied upon the private property of any such individual."

2. The word "limited," when added to the name of an incorporated company, means that the liability of stockholders in that corporation is limited in accordance with the statute provided for that purpose. The extent of the liability is to be determined only by consulting the statute.

24. A stock company was duly organized and incorporated in

the State of New Jersey, under the laws of that State. Capital stock $2,000—200 shares of $10 each. The stock was issued and taken at $5 per share as full paid stock. Recently a controlling interest in the stock has been secured by a party who paid imminent obligations of the company, and has since personally paid current expenses. How is the holder of a majority of the stock to be reimbursed for his outlay if the other stockholders refuse to pay their proportion of the existing liabilities?

A. The owner of a controlling interest in a corporation has no power, under the laws of New Jersey, to levy assessments on other shareholders. This may be done only by the directors, who may assess upon each share of general stock such sums as two-thirds of the stockholders in interest shall direct, not exceeding the amount to which each share shall be originally limited. The law provides, however, that any officer, director or stockholder, who shall pay any debt of the company for which he is made liable by the provisions of the act, may recover the amount so paid in an action against the company for money paid for their use, in which action the property of the company only shall be liable to be taken, and not the property of any stockholder.

25. There are companies doing business in New York organized under the laws of West Virginia, the constitution of which State makes shareholders only liable for the amount of their subscriptions. I would like to know whether such limited liability would be recognized by the courts of this State in the case of a concern the shareholders of which and all connected with it are residents of New York; or whether a shareholder, in the event of its failure, might not be considered a general partner in the concern and liable for its debts.

A. It is held that the members of a foreign corporation doing business here are not personally liable, either for its debts or for its torts, unless such liability is imposed by its charter, or in virtue of some positive law. The immunities conferred on corporations in another State are good here except so far as they are cut down by our own Legislature. They are perfect and absolute until they are revoked or annulled in the State from which they were derived. The personal property of a foreign corporation situated in N. Y. State is taxable without reference to the taxing laws of any other State.

26. Some years ago I purchased from a New York banker a first mortgage bond of a steam railroad in Ohio and was given a few shares of stock as a bonus. Only one coupon was paid; then the securities proved to be worthless. The road went into the hands of a receiver, and now I have a notice from the receiver in Ohio that under an action brought in the Court of Common Pleas in Ohio to enforce statutory liability of stockholders in order to pay the debts of said company I was found to be a stockholder, and judgment entered against me for a sum named, and same must be paid. Is this in accordance with the laws of Ohio, and can the claim be enforced?

A. The Constitution of Ohio formerly provided (Art. 13, Sec. 3) as to the personal liability of corporate stockholders that "in all cases each stockholder shall be liable, over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum at least equal in amount to such stock." The statute relating to corporations (Sec. 3,258 R. S.) contained the same provision in slightly different terms. Finally the courts held that "the Legislature has no power, under the present Constitution of Ohio, to create corporations without securing the individual liability of their stockholders, at least to the minimum amount required by the Constitution; and if the act of incorporation does not secure this, either by express provision or by requiring from the corporators or stockholders such acts, of organization or otherwise, as will subject them to the constitutional provision, the act will be unconstitutional and void" (see 22 O. S. 411). This double liability of corporate stockholders was abolished by an amendment to the Constitution. The provision, as amended, now reads thus: "Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her."

27. Please inform me if it is necessary for an incorporated organization to first obtain permission from any court before they can buy property or sell property.

A. It is certainly not always or usually necessary for a corporation to have an order of court to buy or sell property. The buying and selling of property is the main pur-

pose for which large numbers of corporations are formed; the business of any manufacturing company, for example, is to buy raw materials and sell manufactured goods. As to real property, a corporation may be formed for the purpose of dealing in that also. Any other corporation, one formed for another purpose than dealing in property, is allowed to hold such property only as an incident of its principal business.

28. Please give experience of building and loan associations as to the most equitable withdrawal value of stock, i. e., of dividends accrued and entered on book.

A. It is customary for building and loan associations to withhold from their withdrawing shareholders a part of the accrued profits. It is prudent and equitable to do so, because there is a possibility of a loss upon loans which were made while the withdrawing shareholder was a member, but which are not discovered to be bad until after he has withdrawn. The amount withheld should be as nearly as possible just sufficient to cover this risk, and will be found to differ with different associations. The amount retained has sometimes been as small as one-tenth and sometimes as large as one-fourth. It has been found wise to encourage withdrawals in series which were nearing maturity by allowing a larger percentage of profits to be there withdrawn.

29. 1. Please let me know if the directors of a trust company are personally liable and to what extent.

2. Are trust companies required to keep any reserve at all, and how much?

A. 1. The stockholders in a trust company are liable, like stockholders in other corporations organized under the banking law, for the debts which the corporation itself cannot pay. This personal liability, however, does not extend beyond the par value of the shares held by the stockholder; that is to say, he is liable to lose the money already invested in his shares, and in addition to that an amount to be paid out of his own pocket equal to the par value of his stock. Directors and officers are liable for losses caused by their own negligence or disobedience of any statute.

2. The law does not specify any definite amount of reserve which trust companies are compelled to keep on hand; that matter is left to the discretion of the officers.

30. 1. A corporation recently failed in New Jersey which owes me considerable money and it appears now that the statements made by the president of the corporation regarding the assets and liabilities, on the basis of which I gave them the credit, were absolutely false. The president died meanwhile, after the failure, and the other officers of the corporation, that is, the secretary and treasurer, as well as the directors, disclaim any liability for these false statements, putting all the blame on the deceased president. These statements, however, were practically repeated by the treasurer of the corporation, who managed the affairs exclusively, two months before the company went into the receivers' hands; and I would like to know whether criminal proceedings would stand against the company's officers.

2. Could the directors be held personally responsible for the loss incurred by me through the false statements?

A. 1. So far as the treasurer of the corporation is concerned, there is nothing in our correspondent's statement which would necessarily make him liable in this case. Our correspondent says that the false and fraudulent statements of the president "were practically repeated by the treasurer * * * two months before the company went into the receivers' hands." These repetitions seem to have been made after the money was loaned, and in that case they were not responsible for the loan or the subsequent loss, and no harm was done by them.

2. For any fraud or deceit on the part of an officer or agent of a corporation in transactions within the scope of his authority, the corporation itself may be held liable to a certain extent under the decisions of the New Jersey courts. While no criminal action will lie against the corporation, the fact of the fraud or deceit may be used either for the purpose of avoiding a contract induced by them or for the purpose of demanding damages for a resulting loss.

31. Suppose a corporation enters into a contract for the purchase of land and its charter contains a clause expressly forbidding the corporation to purchase or hold land, and after conveyance the grantor seeks to have the sale set aside on the ground that the corporation

had absolutely no power to make such a contract, claiming the contract to be absolutely void; what are his chances of succeeding?

A. If a corporation which is expressly forbidden by its charter to purchase real estate does purchase it, the State may step in and declare the land forfeited to itself, or it may dissolve the corporation, or take any other steps in the matter which it may be permitted to take under its constitution and statutes. The seller of the land, however, cannot rescind the contract. Before the sale had been entirely completed by payment of the purchase price and passing of the deed he would be in position to refuse to go on with any executory contract he might have made. But after the contract has been fully performed on both sides the vendor is in no position to object that the action of the corporation was *ultra vires.*

32. A society is organized with classes of membership for charitable purposes and the constitution provides for meetings as follows: Executive Board, monthly; Board of Directors, quarterly; society, annually. Quorums required are: Executive Board, five; Board of Directors, nine; society, thirty. The meetings have never been held at the times required nor has a quorum been present at any meeting, and there are probably not thirty members in the society. Can the society be dissolved and the money returned to the members?

A. The method by which a corporation or society organized under the laws may be dissolved is described in the Code. Anyone wishing to procure such a dissolution must familiarize himself with all of those sections, so that we need not set them forth at length. They provide for submitting the matter to the Supreme Court, for a hearing by that tribunal, and a final decision as justice and the interests of stockholders or members may require. The law itself (in section 2419) provides for submission of the matter to the court only when dissolution is deemed to be to the best interests of the "stockholders." The law varies in states.

33. Can a stockholder of a corporation be made to accept in exchange for his stock another certificate which carries a lower rate of interest if the same is voted for at a meeting of the stockholders by a majority of said stockholders?

A. Shares of stock do not pay interest, and our corre-

spondent's question is not altogether clear. This much, however, is certain: that a holder of corporate stock cannot be compelled to give it up in exchange for other shares which are less valuable for any reason, unless the law under which that corporation is organized, or its own articles of incorporation, contain such a provision. Whether such an exchange can be enforced in the case our correspondent has in mind can be told only by one who knows in what State the company was incorporated and under what particular statute of that State.

34. In the stock corporation law, prescribing how books are to be kept, it is ordered that the books shall show who are stockholders, the number of shares held by each, "and the amount paid thereon." Does this last apply only to the first issue of stock by the corporation or to subsequent transfers as well?

A. That part of the stock corporation law is to be interpreted as if it read, "and the amount paid thereon to the corporation." The corporate officers have no means of ascertaining how much is paid for their stock when it passes from hand to hand; neither would it meet the requirements of the law, or serve any useful public purpose, if they should get this information and publish it. What the officers are specially qualified to tell is what proportion of the par value of each share has been paid into the company's treasury.

35. The New Jersey Corporation law declares that no foreign corporation can do business or maintain a suit in that State without complying with provisions of said law. A law digest says: "The mere making of a contract in another State for the sale of goods to be delivered within the State of New Jersey is not transacting business within the State, within the terms of this statute, and such claims can be sued upon in the court of the State without first filing certificate," etc. We have been non-suited in more than one instance in attempting to recover the value of merchandise sold, through a commercial traveler, the goods being manufactured and shipped from without the State of New Jersey, and the amount being usually too small to appeal.

A. The New Jersey statute to which our correspondent refers is that of March 14, 1895 (Gen. St., p. 994), as

follows: "Until such corporation so transacting business in this State shall have obtained said certificate of the Secretary of State, it shall not maintain any action in this State, upon any contract made by it in this State; provided, that nothing herein shall prevent the enforcement of any contract made prior to the fourteenth day of March, 1895." The certificate referred to is one which the Secretary of State is to grant only after the foreign corporation has filed in his office a copy of its charter or certificate of incorporation and certain statements as to the character of its business, etc. There are similar statutes in a number of States, and the courts have generally held that they are not effective to prevent a suit where the contract was made in another State than that enacting the legislation; in fact, the New Jersey statute expressly provides that the corporation's right of action shall be denied only upon "any contract made by it in this State." The New Jersey decisions are to the same effect as those of most of the other States. If the commercial traveler sent out by our correspondent had authority to make an absolute sale of goods in New Jersey, and did make such sale there, the corporation employing him cannot bring suit upon the contract in that State unless it has complied with the requirements of the statute in question. But if the commercial traveler was sent out, as is frequently the case, merely to take orders and submit them to his principals in Iowa for acceptance or rejection as the principals might elect, any contracts that result from his efforts are made in Iowa, not in New Jersey, and there is nothing in the New Jersey statute to prevent suit from being brought upon such contracts in the courts of New Jersey.

36. Indefinite or incomplete views are held even by well-informed lawyers as to the provisions which should govern the disposal of stock held by a stockholder in a so-called close corporation, i. e., consisting of but a few persons, in the event of the death of a stockholder, or in presence of the need of realizing on such stock or shares during the lifetime of a holder. It is but proper to state, instead of leaving to inference: 1. That the shares referred to are unknown to "the street." 2. That the officers and other stockholders desire to hold the option to buy all shares which may have to be sold, etc., in short,

that all concerned assent to this proposition as a preliminary. 3. That the main question is—how to determine the equitable value at which the option may be exercised—even against a higher bid by an outsider.

A. Various devices have been tried in an effort to reach an equitable solution of the difficulty raised by our correspondent, and some which have been found reasonably satisfactory in certain cases have failed entirely in others. When the business is fairly simple, and all of the assets are tangible, it is sometimes feasible to base the value of the stock upon the results of inventories and estimates made according to a few simple rules mutually agreed upon beforehand. The most serious difficulties arise in dealing with a business whose good will or other intangible assets are of large value and liable to considerable fluctuations. In such cases the fairest basis upon which to found the agreement is that of an appraisal by disinterested parties. These should be chosen when the agreement is entered into, if possible; it is, of course, not possible at that time to select appraisers by name who are certain to outlive any one of the stockholders, but in some cases the facts are such that a satisfactory selection may be made by description; that is, it may be agreed that the appraisers shall consist of those persons who may chance to hold certain definite positions at the time an appraisal is to be made.

37. Can a board of directors of a company repudiate and declare null and void a contract solemnly entered into by its predecessors?

A. The directors of a corporation, if they act fairly and wholly within the interests of the corporation, may bind it by a contract to last beyond their term of office. A familiar instance is the borrowing of money and issuing of long-term bonds; in such a case a board of directors may bind its corporation to pay a large sum of money twenty or fifty years after the contract is made, and to pay interest upon such sum, quarterly or semi-annually, during the whole of the intervening period. The contract may be set aside for fraud or collusion, like any other contract made by an agent; but if there is no such objection to it it will be enforced.

38. Please state whether the president of a company chartered in Pennsylvania can give a valued deed for its land to himself.

A. If a Pennsylvania corporation sells land to its president, the latter signing the deed in behalf of the company and as one of its officers, the transaction is not necessarily void. The courts look upon it with more or less suspicion, however, and, at the suit of any stockholder or other person interested in the transaction, it will be very carefully looked into, and will be set aside if the president appears to have taken undue advantage of his official position, or if the contract seems to the court not to be advantageous to the company.

39. At a stockholders' meeting of an incorporated company a lawyer who claimed to represent his clients, stockholders, declined to leave the room in which the meeting was held when objection was made to his presence by one of the principal stockholders. The objection to his presence was very decided, but the lawyer emphasized his remarks that he was there in his capacity as a lawyer, an "officer of the court" and "representing his clients." He defied anyone to put him out and remained in the meeting continually interfering with the proceedings, and making insulting remarks to the stockholder who claimed he had no right there. The chairman was not posted as to the law in the matter, although the objecting stockholder insisted that the lawyer had no right to be present and demanded that he be sent from the room. The chairman allowed the lawyer to remain, giving him opportunity to interfere with the regular course of business. Under such circumstances is any business transacted at that meeting regular and legal?

A. There is no ground upon which to hold that the proceedings of the meeting described by our correspondent were irregular or invalid, and we know of no grounds upon which the lawyer can be punished. As to the former point the law is that the presence at a corporate meeting of persons who are not stockholders and not entitled to be present will not invalidate what was done there unless those persons voted upon matters coming before the meeting. Some authorities go farther than this and hold that even the vote of an unqualified person will not make the proceedings illegal unless it appears that the vote or votes improperly received were necessary to carry through, or to prevent, some course

of action; in short, it must be shown that the illegal votes caused the result of the meeting to be different from what it would have been if such votes had not been received. This is farther than some authorities are willing to go, but all are agreed that the mere presence of unauthorized persons, who are not allowed to vote, will not invalidate the proceedings. We suppose it will be impossible to punish the lawyer now, because he can say with some show of reason that the members assented to his presence.

40. Please advise us whether a corporation incorporated under the laws of another State and paying taxes to the State of New York on the amount of its capital invested in business in New York State is also liable to taxation on the amount of its capital, comprising principally sample stock in New York city.

A. New York State for its own purposes levies a license fee or franchise tax on every foreign corporation authorized to do business here, the tax being computed on the basis "of the capital stock employed by it within this State." If the corporation has any property, real or personal, situated in the State of New York, that property is taxable for local purposes and by the local authorities, precisely as if it belonged to an individual or a citizen of the State.

41. A owns 106 shares in a New York corporation having 1,200 shares (of which 1,134 are issued), having thirteen directors. At the next election five directors will be voted for. Can A, being a director, whose time does not expire for another year, vote five times for B, which will insure B receiving 530 votes, therefore electing him?

A. It is provided by law in this State (section 20 of the General Corporation law) that "the certificate of incorporation of any stock corporation may provide that at all elections of directors of such corporation each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock, multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them, as he may see fit, which right, when exercised, shall be termed cumulative voting." If the certificate of incorporation contains this

provision, in the case here put, the owner of 106 shares will be entitled to 530 votes (there being five directors to be chosen), and he may cast them all for B if he chooses.

42. A foreigner living in a foreign country buys a certain amount of shares in a mining company in this country. A committee is appointed to reorganize the affairs of the mining company and a new company is formed. The old company is sold out at sheriff's sale and its property bought in by trustees for the new company. The holder of the above shares has not been made cognizant of the reorganization scheme. He forwards the stock to this country to ascertain his equity, and is informed by the new company that he has none, and that the reorganization committee completed its work and was discharged, and that at the annual meeting of the stockholders of the company the directors were instructed to receive no further deposits of the old stock under any circumstances whatever. Please inform me if there is any law in this country that will authorize the procedure of a reorganization committee as above cited.

A. Such a loss as our correspondent describes has often fallen upon stockholders in this country and left them without redress. The situation is about as follows: The corporation becomes unable to meet its mortgage indebtedness. All of its property, and more, is due to its bondholders and other creditors, and nothing is left for stockholders. The latter, nevertheless, are in position to compromise with the creditors and reorganize the company on a new basis. A committee undertakes to perfect the details of the plan. Usually stockholders are allowed to come into the new company on a basis of one share of new stock for two or more of the old, or on the payment of an assessment. They have a certain number of days or months in which to decide whether they will do so or not, and if they do not come in within that time the right to do so is lost. The reason the individual stockholder who does not know of the plan has no redress is because there is no individual who is under any obligation to look out for his interests and keep him informed; he must do that for himself. It is not the duty of the bondholders to protect a stockholder's interest; the officers of his corporation are out of office when the property passes into the hands of the bondholders or their committee; and the reorganization committee, while it usually attempts

to keep all stockholders advised, is not bound to see that they have actual, personal notice of the progress of affairs.

43. An organization not incorporated had entrusted several hundred dollars to one of its members acting in the capacity of trustee. Such office has since been abolished. What steps, if any, can be taken to recover said sum, it appearing to us that said person is unwilling to part with it?

A. A club or association which is not incorporated can sue for money due to it as readily as if it were incorporated. If one who was formerly an officer of the society, or any other person, has money belonging to it which he refuses or neglects to pay over, the society can go into court and recover the money as any other creditor might.

44. Please tell us the liability of a non-resident taking stock in a New York corporation, duly authorized by the New York State laws.

A. A non-resident holding stock in a New York corporation has the same personal liability as a resident stockholder. In most cases the maximum limit of his loss is the amount paid for his stock; but in the case of a banking corporation the personal liability extends to the par value of the stock in addition to the amount invested in the stock itself.

45. A building-loan association's charter provided for three auditors. It further provided for a meeting of shareholders to be "held on the first Monday in December in each year, for the purpose of electing auditors." Last December three auditors were accordingly elected for the term of one year. On May 7 the articles of association were amended and the sections providing for the election of three auditors by the shareholders were repealed. This new section was adopted: "Board of Trustees. Sec. 6. They shall employ a competent auditor to examine and verify the accounts and securities, and shall report his findings semi-annually to the shareholders." No time for the new articles to go into effect was named in the several motions passed by the shareholders. Please state what effect the adoption of the new provision relating to the employment of an auditor by the trustees has upon the tenure of office of the three auditors elected in December for a term of one year.

A. It is not certain that officers of a private corporation can be legislated out of office in the manner here described, even if the corporation should undertake so to put them out.

But that question is not necessarily raised by our correspondent. There is nothing in the vote of May 7 to interfere with the tenure of the auditors now in office. Inasmuch as there is no plain indication of a contrary intention, the members of the corporation will be understood to have intended that the auditors now in office should fill out their terms. The corporation is not bound to elect any successors for them, and the appointed auditor may go into office when their term is at an end; or, if the trustees think they are directed by the vote of May 7 to employ a competent auditor immediately they may do so and he may "examine and verify the accounts and securities," as he is required to do. But the three auditors will still remain in office and will attend to such duties as the charter and by-laws lay upon them.

46. A is a small stockholder in a New York corporation and is also in the employ of the corporation. A new by-law has recently been adopted by a very large majority which makes an important change to his disadvantage in his relation to the company as an employe. Is there any way in which A can avoid the effect of this change? It does not seem fair to alter an existing contract in this way, but it has been done by those having clear authority to "make, alter and amend" the by-laws. Is A bound by the fact that he knew this power to exist?

A. It is held by the courts that "a private corporation cannot alter a by-law so as to impair rights which have become vested, although its charter gives it power to alter, amend or repeal its by-laws. The power thus conferred is simply a power to pass reasonable by-laws, agreeable to law, and a by-law that will disturb a vested right is not such." "The power to make by-laws is to make such as are not inconsistent with the constitution and the law, and the power to alter has the same limit, so that no alteration could be made which would infringe a right already given and secured by a contract of the corporation." Where under the charter of a mutual fire insurance association the incorporators are authorized to make such by-laws as they may deem advisable for the management of the corporate affairs it has frequently been held that such by-laws can have no effect

upon contracts previously entered into between the corporation and the assured.

47. Please inform me what are the necessary proceedings to take to dissolve a foreign corporation incorporated under the laws of New York State, and how long it would take.

A. We do not understand what is meant by "a foreign corporation incorporated under the laws of New York State." If any corporation is incorporated under the laws of New York State it is a domestic corporation here, and if it is a foreign corporation that can only be by reason of its having been formed under the laws of some other State or country. A corporation must be dissolved in accordance with the laws of the State of its incorporation. The method under the New York statute is, briefly, as follows: The board of directors, at a meeting called for that special purpose upon at least three days' notice to each director, must, by a vote of a majority of the whole board, vote to dissolve. Then a meeting of the stockholders must be called to ratify the proposition. This meeting is to be held not less than thirty nor more than sixty days after the adoption of the resolution. Notice of the time and place of the stockholders' meeting must be published in one or more newspapers in the county in which the principal office is situated at least once a week for three weeks successively next preceding the time appointed for holding the meeting, and on or before the first day of the publication of such notice a copy thereof shall be served personally upon each stockholder, or mailed to him.

48. Please let us know what legal rights a bondholder of a mining company has when said company defaults in its interest charges and asks of its bondholders, in addition, that they put up an assessment of 10 per cent pending the formation of a new company.

A. The rights of bondholders can best be understood after a careful study of the mortgage, bond or other instrument in which their rights and their obligations, if any, are set forth. If the majority has not power under these agreements to compel the minority to make further advances, then they have no such authority from any source. Such a situa-

tion as our correspondent describes would be an unusual one, and we doubt if it will be found to exist in connection with the bonds in question.

49. Please advise if an incorporated association can legally impose a fine on a member for non-attendance at regular meetings of the said association, such fine being provided for in the by-laws?

A. The corporation to which our correspondent refers is incorporated under what is known as the membership corporation law. It is the law under which clubs, political societies and all kinds of voluntary associations issuing no stock are incorporated. The policy of the law is to leave all of these societies very largely to their own devices. They have no stock, their property interests are generally slight, membership is entirely voluntary and the courts will not interfere with them so long as they are administered with a reasonable degree of fairness and honesty. If a by-law has been regularly adopted the courts will not, as a rule, interfere with its operation. So long as a majority of the members are satisfied that is all that is required, whether the by-law seems harsh or not.

50. Please enlighten me how to ascertain the value of the stock of a corporation.

A. The value of the assets of a corporation is found just as the value of individual or firm assets is found. The tangible property of the corporation is appraised at a reasonable price, and to this is added the value of its franchise and patents, if it has any, and such other intangible assets as it may have. These intangible assets very commonly make up the greater part of the corporation's property, and there is opportunity for a very wide difference of opinion in appraising them. Their value usually depends, in the last analysis, upon the strength of the probability that the public will resort to that particular corporation, and this, evidently, is something not easily reduced to a money value. But these intangible assets have a money value, and it must be found as nearly as possible. Then it remains only to deduct the indebtedness of the corporation from the total value of its assets in order to find the value of all its stock, and

this divided by the number of shares is the value of one share.

51. A farmers' mutual fire insurance company issued a policy for $3,000 on a stock of dry goods and building. The company did not attach a copy of the constitution, but issued a standard policy. The insured suffered a loss. It then developed that a by-law or the constitution prohibited the insuring of any property except farm property, and they refuse to pay. Is the company liable, and must each individual member having premium noted be sued?

A. We have no information as to the statute under which this company is incorporated. The first point to be settled is whether that statute does or does not allow companies organized under it to insure property of the kind here in question. If such insurance is not permissible under the statute the insured has no claim against anyone except, perhaps, for the return of the premium paid for this invalid insurance. Everyone is supposed to know the law, and if any man enters into a contract with a corporation which the corporation has no right to make under the law he has simply made an invalid contract with full knowledge of its invalidity, and the courts will not help him to enforce it or to secure damages for a breach of it. It may be, on the other hand, that the corporation was authorized under the statute to enter into a contract of this kind, and that its inability to do so arose merely out of a provision of its by-laws. If this is the case the corporation itself cannot be held because no agent has been appointed with power to bind the corporation to an agreement of this kind. But the citizen is not bound to know the provisions of any corporate by-laws.

52. By what process may a corporation be induced or compelled to issue a new certificate of shares to replace one which has been lost? The books of the corporation show that the shares stand in the name of the owner of the lost certificate. The certificate has been advertised for but no trace can be had of it. It is in such shape that it can be transferred only by a regular and legal assignment on the certificate itself.

A. Briefly, the process is this: If the company refuses to issue a new certificate the owner may apply to the Supreme

Court at any special term held in the district of his residence or in that in which the corporation has its principal office, for an order requiring the corporation to show cause why it should not issue a new certificate. The petition of the applicant should give the name of the corporation, the number and date of the missing certificate, if known, the number of shares named therein, the name of the person to whom the certificate was issued, and as definite a statement of the circumstances attending the loss as the petitioner can give. Thereupon the corporation will be required to show cause why it should not issue a new certificate. If it appears to the court upon the hearing that the petitioner was the owner of the number of shares described in the petition, and that the certificate has been lost or destroyed, and cannot after due diligence be found, the corporation will be directed to issue a new certificate; but this process varies in different states.

53. 1. A corporation is organized under the Act of 1848 for twenty years. Can one holding two-thirds of the stock prolong that existence without the consent of the other stockholders?

2. If the time should run by and it wasn't discovered for, say, several months after the legal expiration of the charter, what would be the effect if one holding two-thirds of the stock tried to drag the minority stockholders into the corporation?

A. 1. When the existence of a New York stock corporation is nearing its end the time may be extended in accordance with section 32 of the General Corp. Law. This section provides for an extension "by the consent of the stockholders owning two-thirds in amount of its capital stock." This consent may be given in writing or by vote at a special meeting called for the purpose, and when it has been given the extension of the period of corporate existence always follows. The law varies in different states.

2. When the time for which a company was incorporated has come to an end there is usually nothing to be done except either to wind up the business or to form another corporation to take it over; at all events there is no provision in ordinary cases for reviving a corporation whose existence has already

expired. There is one case, however, in which this may be done. If the corporation has issued bonds payable at a time beyond the date fixed in its certificate for its expiration, and if these bonds are unmatured and unpaid when such time limit expires.

54. Brokers are advertising United States Steel and Lackawanna Steel Co. "rights." As I understand, they are dealt in in the same way as ordinary shares. Please give a brief outline of the details and particulars of the same. Also, in regard to fractional shares. In the consolidation of corporations, where for the old stock, certificates of the new are issued, and both do not correspond, are fractional parts issued or included on the certificate?

A. The term "rights" in the above sense is used to express the privilege of a holder of securities of a corporation to subscribe for a new issue of securities at a fixed price. It frequently happens that shareholders entitled to this subscription privilege, for one reason or another, are unable or indisposed to exercise it themselves, in which case they can transfer the privilege or the "rights." These "rights" are then dealt in, as our correspondent states, in the same way as ordinary shares of stock, the price varying according to the premium on the new securities over their subscription price and the amount of such securities covered by the subscription privilege. In the case of the Lackawanna Steel Company a holder of 100 shares of stock of a par value of $10,000 could subscribe to three-sevenths of that amount, par value, of 5 per cent bonds at the price of 96 and accrued interest. As the bonds later sold at about 98, there was a profit of $200 on each $10,000 par value so secured. In the case of the United States Steel Corporation the "rights" are the privilege to subscribe to new bonds in preferred stock instead of in cash. Every holder of 100 shares of preferred stock has the privilege of exchanging 40 shares at par for new 5 per cent bonds. Any holder who does not wish to exercise the conversion privilege on such 40 shares of stock can sell it. As the new bonds are now quoted at about 88, whereas the preferred stock is quoted at 87¼ to 87½, the "rights" on 100 shares, if all

could be converted, would be worth about ½ per cent; but as only 40 shares of each 100 will be so converted the value of the rights on each 100 shares is only about ¼ to ⅜ per cent.

55. Please advise us if there is any stockholders' liability in a fire insurance company, and if so, to what extent the stockholders can be assessed. We wish to know especially in the case of stock fire insurance companies located in the States of New York, New Jersey, Pennsylvania, New Hampshire, Connecticut, Massachusetts and Illinois.

A. There seems to be no statute in any of the States named by our correspondent which places a special personal liability on stockholders in fire insurance companies, as is commonly done in the case of holders of bank stock. If a very large fire leaves a company insolvent, stockholders cannot be assessed for an amount equal to the par value of their stock, as could be done in the case of banks organized under the laws of some of the States. It is frequently provided, however, and is so provided in some of the States specially mentioned by our correspondent, that if an official investigation finds the capital of a company impaired the stockholders must either submit to an assessment large enough to replace the deficiency or the company must wind up its affairs and go out of business. The law is briefly this: If the capital stock of a fire insurance company is found to be impaired to the extent of 25 per cent or more the corporation is to be required to make up the deficiency. To this end it may call upon each stockholder to contribute his proper share. If he fails to do so his certificate may be taken up and a new one issued to him for so many shares as his proportion of the existing assets would pay for at par. The remainder is put into the form of new shares, which are sold at not less than par, and the deficiency is made good in this way. In New Jersey, when the Secretary of State finds the assets of a company to be less than three-fourths of its capital he is required to apply for an injunction restraining the company from doing business until the deficiency is made up, and for other relief. It is then left to

the company, under the supervision of a court of equity, to place itself upon a sound footing again or to be dissolved. In Pennsylvania, when the impairment amounts to 20 per cent or more the company may be forbidden to take any new risks until the deficiency is made up. The courts may also be called upon to determine what further steps shall be taken. The company has practically the same power as in New York to compel stockholders to pay assessments levied upon them. In New Hampshire a company whose capital is dangerously impaired must make the deficiency good in its own way or be dissolved. The Connecticut rule is very much the same. In Massachusetts a company is entitled to assess stockholders to make up any deficiency when the impairment amounts to 25 per cent or more, and if an assessment is not paid that shareholder's stock may be declared forfeited; the shares may be cancelled and others issued and sold to replace them.

56. I subscribed and signed the subscription list for ten shares of stock at $100 par value. The ten shares were sent to me and I have paid two quarterly instalments of $250 each. Can I now refuse to make further payment and return the stock, of course forfeiting the $500 already paid in?

A. A subscriber to the stock of a corporation can be compelled to pay for it, just as the buyer of any other kind of personal property can be compelled to pay for that. Under the statutes one who subscribes for stock and pays part of the price only assumes, usually, more than this simple obligation to the company. While the company itself is in a position to compel him to complete the payments for his stock, the corporate creditors have the same power if they find it impossible to collect the amount due them from the corporation itself. Moreover, the laborers, servants and employes of the corporation, other than contractors, can, in certain cases, compel the stockholder to meet their claims even to an extent beyond the amount yet to be paid upon his shares.

57. The treasurer of a church corporation who is elected annually, but by the by-laws holds his office "subject to the pleasure of

the official board," gives a bond after his election. He is re-elected for several successive years. Does the original bond hold good?

A. It is a settled principle in nearly every State of the Union that the law will subject a man, who has no interest in the transaction, to pay the debt of another only when his undertaking manifests a clear intention to bind himself for that debt. Accordingly it has been held that a bond conditioned upon the faithful discharge of his duties by an officer will be taken to apply only to the term of office in existence at the time the bond is made, unless the case of future elections or appointments is expressly provided for. The words "during his continuance in said office," "so long as he shall continue to hold said office," and other such general terms are construed as referring only to the time for which the appointment has been made.

58. On June 22, we addressed you a communication to which you replied. It was headed West Virginia by Manufacturer. There is one point in your reply that is not clear to us, and we would like to have your explanation. You state that "a corporation chartered by and organized under the laws of one State, if it is not employed by the Federal Government or engaged in interstate commerce, has no right," etc., etc. Now, we sell goods in every State of the Union. Are we not engaged in interstate commerce, and for this reason do we not come in under the decision as though we were employed by the Federal Government?

A. In our former reply to this correspondent we said that a corporation chartered by or organized under the laws of one State, if it is not employed by the Federal Government or engaged in interstate commerce, has no right to transact business in any other State, except by permission of that State. The decisions we then quoted are directly in point. For example, in 143 U. S., 305, the Supreme Court of the United States held that "a statute of New York imposing a tax upon the corporate franchise or business of every corporation * * * incorporated under any law of the State or of any other State or country * * * when applied to a manufacturing corporation organized under the laws of Utah, and doing the greater part of its business outside of the State of New York, and paying taxes

in Illinois and Utah, but doing a small part of its business in the State of New York, does not regulate interstate commerce." Our correspondent is engaged in interstate trade. He may sell the kind of goods he handles in West Virginia and ship them to any other State of the Union, and the latter State cannot interfere with such trade or tax it or regulate it in any manner.

59. A corporation (not a moneyed corporation) is capitalized at $50,000 common stock. After the formation of the company the stockholders voted to add $50,000 first preferred stock. About one-half of this last-named stock was subscribed and paid for. It is the wish of the stockholders at this time to issue $50,000 more of common stock and issue bonds to the amount of $125,000. The stockholders wish to exchange bonds for the first preferred stock that has been issued. Please explain just what course should be pursued to make the transaction legal.

A. When a corporation wishes to issue bonds or to increase its stock, all the requirements of the statutes should be very strictly followed. Nothing is necessary except votes by the stockholders and directors, but the advertisements of meetings and the taking of the vote must be in strict accordance with the statutory requirements. The issue must be assented to by holders of not less than two-thirds of the capital stock. This consent may be given either in writing or by vote at a special meeting of stockholders called for the purpose, upon the same notice as that required for the annual meetings of the corporation. A certificate that the consent or vote was duly given must be subscribed and acknowledged by the president or a vice-president, and by the secretary or an assistant secretary of the corporation, and this must be filed in the office of the clerk or register of the county in which the corporation has its principal place of business. An increase of capital stock may be made as directed by law. The most important point is to see that all statutory requirements as to the notice of the meeting and the conduct of affairs during the meeting are strictly followed.

60. Is the kind of stock described in the inclosed paper assessable

for any debts or claims of this trolley line after the amount subscribed for is paid?

A. The blank form accompanying our correspondent's letter binds the person signing it to subscribe and pay for at par a number of shares of a proposed electric railroad company. This provision is made part of the contract: "It is further agreed that the stock hereby subscribed for shall be non-assessable stock." The subscriber can, of course, insist that the stock issued to him shall be, and shall state upon its face that it is, non-assessable; in any other case he may refuse to take it. If non-assessable stock is issued and taken the company never can levy an assessment upon it for any purpose. If the corporation itself is ever incapable of paying all of its debts the holder of this stock has simply the same personal liability that the holder of stock in any other corporation (not for banking or insurance purposes) organized under the laws would have. If any of the stock has been issued originally for property or services, and the property or services have been overestimated, the stockholders can be compelled to make up the difference to creditors of the corporation.

61. 1. What is the legal position of the holder of first mortgage bonds relative to title?

2. Under foreclosure proceedings, representing 90 per cent of outstanding bonds, what is the position relative to title of those who hold the remaining 10 per cent of said bonds?

3. Is a sale by foreclosure, representing 90 per cent of the bonds, binding upon the 10 per cent who have taken no part in the foreclosure?

A. 1. The title to property covered by first mortgage bonds remains in the corporation issuing the bonds; the bondholders simply have a right of foreclosure in case the conditions of the bond are not fulfilled.

2. A trustee is usually appointed to act for the bondholders in case of a breach of any of the conditions under which the bonds were issued; this is to avoid the inconvenience of suits by a number of bondholders, and also in order that there may be some one whose special duty it is to see that the conditions of the bond are complied with and to take

prompt action in case of any default. When such default has occurred it is the duty of the trustee to foreclose promptly.

3. When the mortgage has been foreclosed upon the demand of nine-tenths of the bondholders, whether the foreclosure was made by the trustee or by the bondholders themselves, the sale must be fairly conducted so that the interests of the other tenth may be safeguarded as well as those of the nine-tenths demanding the foreclosure and sale. The minority cannot prevent a foreclosure except by purchasing the bonds of the majority. The sale having been fairly made, the proceeds, or so much of them as may be necessary to settle the claims of the bondholders, must be equitably divided among them. The interests of the minority are to be looked after as carefully as those of the majority.

62. A co-operative society was organized with the purpose of conducting retail stores, the profits to be divided among the shareholders and customers. The shares were not to be transferable except if the society could not refund the money paid for the shares within thirty days; then the shareholder should have the right to sell his share. Is there any State that would incorporate this society with the above stated by-law?

A. We suppose such a society as our correspondent describes could be incorporated in any State. The law generally sanctions any kind of corporate by-laws which are not likely to work any injustice either towards stockholders or towards creditors of the corporation. The by-law proposed by our correspondent would seem to fall within this description. If a stockholder, at the time when he purchases his stock, assents to an arrangement whereby he is not to sell it except upon a refusal of the company to redeem it at par, we can see no reason why this agreement should not be enforced.

63. "To accommodate a friend" I cashed a check for $60, drawn by the treasurer of a manufacturing concern in Kentucky, which check came back unpaid and protested, the protest notice giving the reason as "payment refused." After reimbursing my bank I handed the papers to my lawyers for action. Shortly afterwards I learned that the Kentucky concern maintains an office in New York (Wall

street), and was asked by the party for whom I had cashed the check to call and see them, which I did. I met the secretary, who showed me a telegram from the treasurer, the drawer, reading as follows: "Have received no communication from Mr. G. (the party to whose order the check was drawn and to whom I paid the money). Payment on check was stopped, protest thereof not intended. Will put $75 with B (president of the concern, who occupies a highly responsible position with a large and well-known concern here) at once to pay G if he deems proper." Mr. B. refuses to pay; am I not right in proceeding against the corporation for payment of their check?

A. The check here in question was drawn by the treasurer of a manufacturing corporation, but it is not stated that the corporation itself was involved in the matter. A check drawn by a treasurer does not necessarily bind his corporation; in order that it may have that effect it must purport to bind the corporation and it must be made for a purpose for which the treasurer is authorized to bind the company. The same statements apply to the telegram sent by the treasurer; that does not bind the company unless the sender was duly authorized so to bind it. If this is a corporate check, made for corporate purposes, under due authority, it may be enforced against the corporation.

64. In an article you say in relation to the common stock of the United States Steel that the dividend is probably a thing of the past. I would like to ask the question if this concern, as it claims, has earned interest on its bonds, a dividend on its preferred stock and a surplus besides, and, in fact, would seem to show at the end of the year a surplus approximating to one hundred millions of dollars—if this should prove true, on what ground could they refuse payment of a dividend on the common stock? Is it not true that after fixed charges, betterments and the regular interest on the various bonds and dividends on preferred stock have been paid, all the remainder belongs to the common stockholders? By what right can these earnings be withheld?

A. It is not feasible for the stockholders of a large corporation to manage its affairs, and a few of their number are chosen as directors for this purpose. Questions of management, including the declaration of dividends, are left to the discretion of these directors. If the stockholders are not satisfied with the manner in which this discretion is exercised

they have always the remedy, which lies in the choice of a new board—a remedy which can be availed of without very great delay. The courts will not interfere unless it can be shown that the directors have been guilty of a wilful abuse of their powers, of bad faith, or a clear neglect of duty; merely to show that they have acted unwisely is not sufficient. A very large number of attempts have been made to induce the courts to interfere with the discretion of directors in this matter, but these attempts have always failed unless one of the facts named above could be substantiated.

65. For several months I have been short 3,500 shares Pennsylvania Railroad. On April 26 my brokers notified me that the lenders of the stock demanded the delivery of the bond subscription rights, and they would be bought in for my account. Is it not a fact that after the day on which Pennsylvania Railroad shares began to be quoted ex-rights, the time had expired to demand these from me?

A. It is true that the books closed in this case, but it is not true that the buyer's privilege of demanding the rights from the seller expired on that day. That is a privilege which accrued to the buyer the moment the rights were made available to stockholders, and he could not be divested of it at any time thereafter without his own consent. As a matter of fact, the rights in this case still had a value and were quoted separately from the stock, and the right to subscribe for the bonds expired. Usually the seller's broker notifies him, on the day of the closing of the books, that if he does not procure the rights himself and turn them over for the buyer's benefit they will be purchased by the broker on the seller's account.

66. In a close corporation, where one stockholder transfers to another a certificate for a certain number of shares, is it necessary for the new owner of the certificate to immediately surrender it to the proper officer and have a new certificate issued in his own name, or can he hold the transferred certificate indefinitely without in any way jeopardizing his interest or rights? If the transfer is noted in the stock ledger is that all that is necessary? Must the signature to the transfer be identical in the matter of spelling to the name on the face of the certificate?

A. The chief reason for recording a transfer of stock is

to give notice to those who would otherwise be in ignorance of the fact. As a rule, those persons who know that the transfer has been made are bound by the knowledge, however they may have acquired it; but an entry upon the proper book binds even those who have no actual knowledge of the transfer, because it gives them an opportunity to acquire such knowledge if they wish to do so. So long as the transfer is not registered the former owner of the stock remains personally liable to creditors of the corporation (in those cases in which a stockholder is liable at all) unless the creditors had actual notice of the transfer at the time the credit was given. If the former owner of the stock should see fit to sell it to another, or pledge it for a loan, that buyer or pledgee, if he had no knowledge of the transfer and it had not been registered, would have rights in the stock superior to those of the actual owner, who had neglected to put the public on its guard.

67. 1. In case a treasurer of a realty company neglects his duties can he be expelled by the board of directors and a new one be elected for the unexpired term?

2. Can he be expelled from the board of directors for the same reason?

3. Can he claim salary for the time he was treasurer, when in that time he neglected his duties, with the exception of signing checks, which were sent to him by mail in order to be signed and returned by him signed?

4. Can the whole board of directors be discharged for not seeing to it that the treasurer did his duty and a new board be elected for the unexpired term?

A. 1. The authority of a board of directors to expel the company's treasurer must be determined by consulting the statute under which the corporation is organized and its own by-laws. "The directors of a stock corporation may appoint * * * a secretary, treasurer and other officers, agents and employes, who shall respectively have such powers and perform such duties in the management of the property and affairs of the corporation, subject to the control of the directors, as may be prescribed by them or in the by-laws. The directors may require any such officer, agent or employe to

give security for the faithful performance of his duties, and may remove him at pleasure."

2. A treasurer who is also a director cannot be removed from his office of director simply because he has not performed the treasurer's duties satisfactorily. A director, whether he holds any other office or not, cannot be removed at all unless the power so to remove him is lodged either in the board or in the stockholders by the articles of incorporation or the by-laws.

3. So long as a treasurer is deemed worthy of his office he is entitled to his salary; and he is to be held to be worthy of his office until he is removed by proper authority.

4. The directors cannot be removed unless by the fundamental law of the corporation or its by-laws; such power is vested in the stockholders.

68. The following question came up in the course of business: A time note has been issued by a manufacturing concern and indorsed by another manufacturing concern. A bank took the note and discounted it for the benefit of the makers, knowing that the indorser was an accommodation indorser. We are advised that the indorsing president had authority to make and indorse paper for his company's own business purposes; but could not bind his corporation by an accommodation indorsement. Will you kindly express your opinion on the subject?

A. The courts hold that an ordinary business or manufacturing corporation may indorse commercial paper in the regular course of its business and for its own benefit, but that it has no authority to become an accommodation indorser, even if it is paid for the service. "While a corporation has the general power to bind itself by promissory notes and contracts of indorsement, made in the usual course of business, it has no power to indorse for the accommodation of the maker for a consideration paid. Where the maker of a promissory note payable to his order, and purporting to be endorsed by such a corporation, procures it to be discounted for his own benefit, if unexplained, this is notice to the discounter that the indorsement is not made in the usual course of business, but is for the accommodation of the maker."

69. A certain city has purchased a tract of land in our town, and they propose to run a sewer to the Sound. A part of the way it is to go through the highway. They have placed a railroad track in our highway. The Commissioner of Highways demanded that it be taken up, but they will not do it. What steps shall he take to make them remove it, and also to prevent them from placing the sewer in the highway?

A. The general rule is that one corporation may not take property already in use by another corporation, unless they have power expressly or by necessary implication to do so. "A corporation, either private or municipal, cannot under a general power to take lands for a public use, take from another corporation having the like power, lands or property held by it for a public purpose pursuant to its charter, but an easement may be acquired by legislative authority in lands held and occupied for a public use, when it may be enjoyed without detriment to the public or interference with the use to which the lands are devoted." If the city, in the case under consideration, is acting without proper legislative authority, the remedy is by injunction in a court of equity.

70. At a recent sale of the unclaimed freight of a railroad company we purchased cases catalogued as dry goods. As the purchasers are not allowed to examine the contents of the packages offered for sale, they buy upon the representations as the catalogue reads, and consequently pay for same such a price as in their judgment such goods would be worth. Upon examination of said cases at our place of business we find that it does not contain dry goods, but is filled with goods of an entirely different nature and worthless. What redress have we?

A. If these goods were guaranteed to be dry goods the purchaser is entitled to a return of his money on returning the goods. But railroad companies are generally very careful to state, either upon the catalogue or in printed advertisements of the sale, or verbally before the sale begins, that the goods are sold under the description as given to the company at the time of their shipment, and that they are sold without any guaranty. If, as we presume, this course was pursued in the case under discussion, the buyer took the goods at his own risk and has no redress.

71. In a corporation a question has arisen whether at the meetings of the Board of Directors the president has a right to cast his vote whenever he chooses or whether he can do so only in case of a tie. The by-laws as adopted by the stockholders are silent upon this point.

A. The statutes generally require that the president shall be chosen from among the directors and that his powers and duties shall be prescribed by the directors or in the by-laws. Where the by-laws are silent upon the subject, as in the case our correspondent puts, there is no authority known to us under which any director can be deprived of his vote on any question. The fact that the director is also president of the corporation does not, of itself, deprive him of any of a director's rights. It may be expedient to adopt a by-law preserving to the president his right to vote only in case of a tie, but if there is no such by-law he should be allowed to vote as a director because he is a director.

72. Does the fact of being a bondholder of a railroad entitle a person to demand a copy of mortgage on said railroad? Does the law protect him in demanding such?

A. Mortgages of this character are instruments entered of record. Any one interested has a right to inspect and copy the same. No man can demand that a copy shall be furnished to him, except at his own expense.

73. A, representing a corporation, offers to give a note in a settlement which M declines to accept, doubting A's authority to make the note. A then procures B to indorse and guarantee payment of note and M accepts it. The note is transferred to third party for value. Can B escape liability on the note if A shows that he had no capacity to make it?

A. If A could not give a note to bind the corporation he represents he may still be liable himself for it. But B is most certainly liable, as he guarantees the sufficiency of the maker's signature as well as the payment at maturity.

74. I wish to resign the vice-presidency of a domestic corporation but expect my resignation will not be accepted. If so, what is my standing, and shall I be considered an officer?

A. If the charter or by-laws of a corporation contain any directions as to the manner of resigning an office, and the

time at which or the conditions under which a resignation becomes effective, these will prevail. Such a provision is not very common, however, either in a charter or by-laws, and where these are silent upon the subject an officer is entitled to choose the moment at which his resignation shall become effective. All he is required to do is to write out his resignation and present it to the directors through the president or secretary. The resignation will become immediately effective if the officer so declares. There is no other person or body of persons having authority to retain him in office longer than he wishes to serve.

75. Please inform me whether a telephone company has the same right as a railroad company in condemning land for the purpose of erecting poles when the owners of property do not want to give or sell them the right of way over the land. Can the company compel the property owners to give them such right of way? This does not refer to New York property but to Pennsylvania and New Jersey. Can the company say on what part of the property this right of way shall be given when a possibility exists of their taking another course?

A. Telegraph and telephone companies have a right by statute, both in New Jersey and Pennsylvania, to erect posts and poles in streets and public highways, upon payment to abutting property owners of such damages as they may be entitled to receive, all questions as to the proper amount of damages being left to disinterested persons. We do not find in either State a statute giving these companies the same right as railroad companies have to condemn lands not lying in public roads or streets. Their lines usually follow railways or highways, and the Legislatures, both in New Jersey and Pennsylvania, seem to have been of the opinion that satisfactory private arrangements could be made in the few cases in which it might become necessary to cross private lands.

76. A sells some railway stock to B, who fails to have the certificate, which has been signed in blank on the back, replaced by a new one. A dividend is declared to stockholders of record, and the check is sent to A. Who is legally entitled to the dividend?

A. If corporate stock is transferred, and there is no agree-

ment to the contrary, the transferree is entitled to all dividends declared after the transfer. The corporation is legally justified in paying the dividend to the person appearing upon its books as the owner of the stock; it is not bound to require him to exhibit his certificate to show that he still has it, but may rely upon the evidence of its own stock and transfer books.

77. If a director of a corporation sells goods to it, as an individual, or buys goods from it, or enters into any contract with it, what is his position and what are the rights in the matter? Can the contract be set aside as if it had been made with an infant—for example?

A. A contract made by a director with his corporation is held by the courts to be voidable, but not absolutely void. Any other director, or any stockholder, may go into court and ask to have the agreement set aside as being unfair to the corporation and its stockholders. Then the burden will be upon the director to show by affirmative proof that the contract was honestly made and that it was fair to the corporation and as favorable to the interests of the stockholders as any contract looking to the same end but made with another person would be likely to have been.

78. 1. Are the members of a social or literary club, duly incorporated, personally liable for its debts? If they are not liable for all the debts please say what part of them, if any, they are liable for.

2. If the club is not incorporated does that fact make any difference as to the personal liability or non-liability of its members for its debts?

A. 1. The members of a club incorporated are not individually liable for the debts of the club. Liability falls primarily upon the club itself, and secondarily, in some cases, upon the officers. As to the latter liability the statute provides that "the directors of every membership corporation, except a society for the prevention of cruelty to children or animals, a corporation for the promotion of agriculture and which holds annual agricultural fairs, and a corporation formed for promoting or maintaining the principles of a political party, shall be jointly and severally liable for any debt of the corporation contracted while they are directors,

payable within one year or less from the date it was contracted."

2. The members of an unincorporated club may or may not be individually liable for its debts. If they are liable at all it is upon the principle of agency; that is, the creditor must prove that the officer with whom he contracted was authorized by the members of the club, either expressly or by implication, to enter into the contract for their benefit and to pledge their individual credit for its fulfillment. It is precisely the same question that arises in any case in which it is sought to hold for a debt some person other than the one who actually negotiated the contract out of which the debt arose.

79. In case of a suspension of a stock company for any cause, would preferred stock be paid before common, or vice versa?

A. The rights of a holder of preferred stock are to be sought first in the certificates of stock which he holds as evidence of his contract, in the terms of the contract itself, and in the statute by virtue of which the contract was made. But it is a settled rule of law that, in the absence of any statutory provision or special contract, preferred stockholders have no priority over the holders of common stock in the distribution of assets after the dissolution of the corporation.

80. We are a corporation organized under the laws of the State of Ohio, doing business in New York city. We make our payments by checks, which have the name of the company engraved in the left hand corner, together with its locality, etc., and signed simply "John Smith, Treasurer." Our promissory notes read: "The B Manufacturing Company promise to pay," etc. Signed "John Smith, Treasurer." Will you please inform us if this method of signing checks and notes is correct and legal? It is claimed they should all be signed "B Manufacturing Company, per John Smith, Treasurer."

A. Where a person executes an instrument simply as "A B, Trustee," "agent," or the like, the appended words, if not explained by the context, will be construed simply as words of description, and the person whose name appears upon the paper will alone be bound. For this reason text-

book writers usually advise that an instrument by which it is intended to create a corporate liability should be signed by writing the name of the corporation and adding "by A B, agent, Treasurer," etc. In some states it has been held that a bill made upon paper bearing the printed letter head of the company, signed with the name of the president, with the title of his office abbreviated, and directing the contents to be charged "to motive and power account," purports to be the bill of the corporation and not that of the signer individually. It is held also that "if the name of the principal and the relation of agency is disclosed upon the face of the paper, even though it is doubtful from the terms of the instrument whether the principal or agent is intended to be bound, parol evidence of facts and circumstances under which it was given is admissible to remove the doubt and to place the liability upon the principal."

81. 1. Are railroad stocks taxable, inasmuch as railroads are supposed to pay their own taxes?

2. Also, are railroad mortgages subject to taxes?

A. 1. It has been decided that "the capital stock of a corporation and the shares held by the several stockholders are distinct pieces of property for the purposes of taxation." Whether they are taxed separately in any State depends, therefore, upon the statutes of that State.

2. Railroad mortgages are made taxable by the same statute.

COUNTERFEIT.

1. Please inform us whether a person has the right to write across a counterfeit bill the word "counterfeit," and if the party offering the bill has any claim for the defacing of the bill.

A. An act of Congress provides that "all United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word 'counterfeit,' 'altered' or 'worthless' upon all fraudulent notes issued in the form of and intended to circulate as money which shall be presented at their places of business." Any one who stamps a bill

wrongfully must redeem it, but if it is counterfeit he has the right, and if he belongs to either class above mentioned it is his legal duty thus to write upon or to stamp it.

2. We have been informed that an agent of the general government has called upon many retail merchants in this city and either confiscated or warned them against offering for sale articles to which are attached originals or imitations of any coins, stamps, postal cards, etc., issued by the authorities of either this or any foreign government. In all these cases no intent to counterfeit or defraud is apparent, and in nearly all, the "original stamp" or "imitation" cannot be removed from the article to which it has been attached without destroying one or both. Will you please give us your views on this matter?

A. The act of Congress, section 5,464, makes it a penal offense to forge or counterfeit any postage stamp, or any stamp printed upon any stamped envelope, postal card, or any die, plate or engraving thereof, and section 5,465 extends the penalty to the forging or counterfeiting of the postage stamp of any foreign government. But there is no law to prevent the affixing of a genuine stamp to anything whatever. The law also forbids the counterfeiting of coin.

COVENANTS.

1. Rule 12 of Cypress Hills Cemetery forbids persons entering any private lot to perform work therein unless accompanied by owner, or upon his written request, sanctioned by the superintendent. Rule 13 reserves to trustees the right to have all work done in the cemetery by workmen thereof, except monumental work. Will the law uphold any such rules as above? Can I not enter my own lot and sod and plant anything unobjectionable, or go out in open market and employ a person to do so, because the price is less than the cemetery charges?

A. If the lots in the cemetery are sold subject to the conditions specified, then the law will sustain the managers in enforcing the rule. The rule may seem arbitrary, and it has that aspect; but there is a side to the question that gives a reasonableness to the restriction. It is not every one that can be trusted to improve a lot so that it will present an unobjectionable appearance, and we think the authorities may

very properly require the sanction of the superintendent before permitting such work to be done. Each lot is part of a great park, and the general effect must be regarded to some extent in making individual improvements.

CUSTOM DUTIES.

1. If a fire on a dock should consume or damage part or all of a shipment on which duty had been paid, should we get back the duty? In that case what course would the government take to ascertain which (if any) of the goods had been carted away before the fire?

A. No provision has been made by which an importer can recover the duties paid upon goods which have been burned after being discharged. By section 2984 of the Revised Statutes the Secretary of the Treasury is authorized "upon the production of satisfactory proof to him of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while within the limits of any port of entry, and before the same have been landed under the supervision of the officers of the customs to abate or refund, as the case may be, out of any moneys in the Treasury not otherwise appropriated, the amount of impost duties paid or accruing thereupon."

2. An importer buys of a foreign manufacturer a certain article which any one can buy of the same manufacturer at the same price. The government appraiser concedes this upon evidence in his possession, but at the same time contends that other manufacturers charge 20 per cent more for the same article. I contended that if other importers can buy the same article in any desired quantity at the same price it constitutes a market value for this manufacturer's product. If the importer is raised 20 per cent at the Custom House he would be liable to penalty, yet he entered his goods at actual cost price, not knowing that other importers pay duty at a higher valuation.

A. The United States courts have always held that the value for the computation on appraisal is the wholesale market price on the day of exportation in the principal markets of the country from which the goods were exported. It is also held that it is for the appraisers to decide what markets in those countries are the principal ones, and their de-

cision is final. The value for dutiable purposes, therefore, is determined without regard to the actual cost or to the value in the market in which the goods were bought, unless this appears to the appraiser to be one of the principal markets in the country of exportation.

3. We ordered distillers in Pennsylvania to pay tax on a lot of our whiskey, held in bond, and ship the same to us. On May 30 the goods were shipped on the Pennsylvania Railroad and have been lost in the floods at Conemaugh Valley. If application is made to the government, is there any precedent for it to refund the amount of tax paid on the goods?

A. There is no warrant of law for the refunding of duties thus collected upon goods which are lost after they have left the custody of the government officials.

4. A has a shipment of goods come in. He received permit from Custom House, marked for inspection on the wharf. A sent and took the goods away without any molestation. A few days after he received notice to deliver one package of the same to public store to be inspected, A standing all expense. Is this not unfair? A claims where permit so states goods should be passed or held on the wharf.

A. The goods of our correspondent must have been ordered to the Appraisers' stores in accordance with the provisions of section 2899 of the Revised Statutes. This section provides for a bond to be given by the importer in case he is allowed to take any of his goods before the appraisement is made. The condition of the bond is that the merchandise "shall be delivered to the order of the Collector at any time within ten days after the package sent to the public stores has been appraised and reported to the Collector. If in the meantime any package shall be opened without the consent of the collector or surveyor given in writing, and then in the presence of one of the inspectors of the customs, or if the package is not delivered," in either case the bond is forfeited.

5. The Administrative bill by imposing a duty on packages, increases the duty on some of our articles considerably. Please inform us if the paying of duty constitutes a withdrawal, or if it is necessary for us actually to remove our goods from the bonded warehouse and put same into free store.

A. We do not find any warrant in law or in any reported decision for holding that goods in bond, on which the duty has been paid, will be subject, as in the case put by our correspondent, to an additional charge, as that upon packages. The reporter's notes of some of the cases state broadly that "so long as goods remain in the custody of the officers of customs, and until they are delivered to the importer, they are subject to any duties which Congress may see fit to impose."

6. Is there a provisional or conditional duty on United States wheat imported into England, which operates when the price of our wheat settles below a certain point? Your answer will settle a mild dispute on this subject.

A. There is no duty on wheat in England..

7. I imported some iron from abroad and paid the duty on it. I reshipped this iron to Europe and now they wish to ship it here again. I can show by the clearance papers that I reshipped this iron at the time, and of course did not get any refund of duty. Can I import the goods now for the second time without paying the duty on it again?

A. They are subject on reimportation to the duty, precisely as if they had never been here before.

8. If the tariff on woolen goods costing from 2s. to 5s. be reduced, either partially or radically, would it benefit the importer after his first loss on stock on hand?

A. It is admitted by all but the politicians that with free wool the manufacturers of woolens in this country would be better off under the proposed reduction of duties than they were before, while the people would obtain their needed goods at a lower price. The importers of woolens would rather lose than gain by the change.

9. Are goods in transit, bound from a Canadian port, to go on board a British vessel at an American port, liable to duty?

A. Goods may come from the Canadian frontier in bond, or from a Canadian port to an American port for reshipment, without paying duty.

10. Will you please explain to us the meaning of "The short price (drawback $2.60 per 100, less 1 per cent)" in your market quotation, on sugars; or, in other words, who gets that drawback?

A. The drawback is only on refined sugars that are exported. A refiner buys a cargo of raw sugar in bond and pays the duty upon it. He then refines it, and if he ships it to a foreign country he is allowed to recover from the United States Treasury the duty he has paid on it, less a fraction the Government retains for expenses. This drawback is fixed by the Secretary of the Treasury. It is calculated at $2.60 per 100 pounds. There is no drawback upon sugars consumed in this country, so that the foreigner gets the American sugar in his tea and coffee just that much cheaper than our own citizens.

11. If I had merchandise in bond in a warehouse and it was destroyed by fire or the elements, does the Government claim the payment of the duties for such goods destroyed?

A. It is provided by law (section 2984 United States Revised Statutes) that "the Secretary of the Treasury is hereby authorized, upon production of satisfactory proof to him of the actual injury or destruction, in whole or in part, of any merchandise, by accidental fire or other casualty, while the same remained in the custody of the officers of the customs in any public or private warehouse under bond, or in the appraisers' stores undergoing appraisal, in pursuance of the law or regulations of the Treasury Department, or while in transportation under bond from the port of entry to any other port in the United States, or while in the custody of the officers of the customs and not in bond, or while within the limits of any port of entry and before the same have been landed under the supervision of the officers of the customs, to abate or refund, as the case may be, out of any moneys in the Treasury not otherwise appropriated, the amount of impost duties paid or accruing thereupon; and likewise to cancel any warehouse bond or bonds, or enter satisfaction thereon, in whole or in part, as the case may be."

12. We bought goods and shipped same from Russia on a certain date. The cost price was $4.50 per pc. We contracted for these goods and in the meantime they decreased in price to $3.00 per pc. Please let us know on what price we have to pay the duty.

A. The duty to be paid by the importer in a case of this

kind is not based necessarily upon the price paid by him for the goods, nor upon the price at which he might have purchased them at some subsequent time. The price at which he actually secured the goods may not represent their actual market value either at the time of purchase or at the time of exportation to this country. It is the prevailing market value of the goods upon which the duty is assessed, whether that is the amount paid for this particular consignment or not. This is the language of the law: "Whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price of such merchandise, as bought and sold in usual wholesale quantities, at the time of exportation to the United States, in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale, including the value of all cartons, cases, crates, boxes, sacks and coverings of any kind, and all other costs, charges and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States."

13. I have seen it stated recently in connection with the sale of Shamrock II., and the breaking up of the hull for scrap, that some of the customs officers hold that the metal is not dutiable, as the vessel was declared unseaworthy. They are reported as having stated that there have been many decisions bearing out this view of the case.

A. A ship is not "goods, wares or merchandise," nor a "manufactured article" within the definition of those words as used in customs matters. Ships come into United States ports every day (are imported, so to speak) and no effort is made to collect duties upon them. It would seem to follow that if a vessel is broken up after it has been so imported free of duty, the pieces would not become dutiable. This has long been the doctrine of the customs officers and of the courts as well. Thus, in a decision made on December 14, 1899, the customs authorities in Washington held that on the sale of a foreign built vessel in a port of the United

States "the materials taken therefrom would not be regarded as an importation within the meaning of the customs laws, and would, therefore, be exempt from duty." (Treasury Decision No. 21,842.) The Supreme court of the United States has recently held (166 U. S., 110) that "a foreign built vessel, purchased by a citizen of the United States, and brought into the waters thereof, is not taxable under the tariff laws of the United States."

DAMAGES.

1. A is owner of a valuable secret formula: B is and has been employed for some years in a responsible firm, having an extensive sale of products to which A's formula would be applicable. B informed A that he was anxious to join A in marketing his product, and a meeting was arranged. By gross misrepresentation B induced A to allow him a half interest in the manufacture and sale of the product. A brief memorandum to this effect was exchanged. A afterward learning of the deceit practiced upon him informed B that he would not go on with the contract on the basis agreed upon, whereupon B declared he was out of it and abruptly left. Then A negotiated with C for the purpose of forming a company. While these negotiations were going on favorably C informed A that B had called upon him and informed him that he himself had a valid claim against A for one-half of the shares of any company that might be formed for this purpose. This act of B is extremely prejudicial to the interests of A, and you are requested to advise as to the steps that should be taken to prevent a repetition of such an injury.

A. It is an actionable wrong for one who is not an owner of property or a property right, and who has no interest in it, to represent himself as being owner or part owner of such property or right, and thus to defeat a sale by the real owner. The latter is entitled to damages as he would be for any other injury to his property; and if it can be made to appear that the misrepresentation still continues and is likely to result in irreparable damage a case is presented for the issuance of an injunction forbidding a continuance of the harmful misrepresentation.

2. A contract for canned corn for delivery during the packing season contains the following clause: "If the seller's packing establishments are wholly or partly destroyed by fire or explosion, or crop

damaged by hailstorm or other unavoidable casualties, the seller shall be excused from making other than the pro rata delivery." Can the destruction of the crop at this season of the year be considered an unavoidable casualty?

A. The destruction of the corn crop at this season of the year, except by the deliberate act or as a result of the negligence of the owner or his agent, would be an unavoidable casualty.

3. I sent the following message to a customer of mine in Baltimore: "Please withhold rice purchase, will be in Baltimore with samples tomorrow morning." This message was handed in at the telegraph office about 2 P. M., but did not reach my parties until after 6 P. M. the same evening. The result was that when I arrived in Baltimore the next morning I learned that they had been waiting to hear from me until shortly after 5 P. M., and not receiving any word, concluded that I had nothing to offer, and consequently placed an order, on which my commission would have amounted to $140, elsewhere. The result of the trip to me was the loss of time and expenses connected with same. I learned later from the telegraph company that on that day their Baltimore wire was out of order, and that they were accepting messages subject to delay; however, the telegraph clerk failed to mention anything to this effect when I handed him the message. Can I hold the telegraph company liable for the loss I sustained through the failure of their clerk to notify me that the message could only be sent subject to delay?

A. We doubt if our correspondent will be able to recover any substantial damages in this case. In the first place, telegraph companies generally have a stipulation on their blanks releasing them from more than nominal liability in ordinary cases, and the person who writes a message on this blank is held to accede to that condition. But there is a stronger reason. The sender of this message will not, so far as appears, be able to prove any certain loss arising from the delay of his dispatch. In order to recover he would be required to show that if there had been no delay he certainly would have made the sale.

4. 1. I have a contract reading November-December shipment from Kobe. The goods were shipped February 5. When can I go into the open market to buy against this contract?

2. In case the same style of package is not obtainable in this market, can I buy the nearest to it?

A. 1. The buyer, under such a state of facts as this, may go into the market and buy at the time when the goods would probably have reached this market if they had been shipped at the end of December.

2. The market price at the time and place fixed for delivery is to be ascertained as nearly as possible to serve as a measure of damages. If there is no regular market there then the nearest market may be taken, and due allowance be made for freight between the two. If there is no market near enough to make this rule a fair one the courts would probably allow comparison to be made with other goods of a like character; the object is to find out, as nearly as possible, what the buyer of these goods could have sold them for if they had been delivered to him in accordance with the contract.

5. We sent to a bleachery 7,139 yards of 38½-inch 64x64 5.15 gray cloths to be bleached and stretched down to 36 inches in width. The outturn of this lot of goods was 7,525 yards. During the process of bleaching 531 yards of the finished goods were damaged, leaving 6,994 yards of perfect finished cloths. Would the bleachery have the right to pay us for the shortage of 145 yards in the gray and make a proper delivery according to the usual custom of such settlements, making no charge against us for finishing the 531 yards of damaged goods?

A. The solution suggested by our correspondent is evidently not the correct one. The bleachery takes 7,139 yards with an obligation to return 7,525 yards. It does return only 6,994 yards, and the suggestion is that it is to pay, not for the difference between what it ought to have returned and what it actually did return, but merely for the difference between the 7,139 yards received in one form and the 6,994 yards returned in another form. If this were the correct solution then the bleachery would have nothing at all to pay if it had returned 7,139 yards of finished cloth, notwithstanding its obligation to return 7,525 yards—in other words, there are a large number of yards of finished cloth, namely, 386 yards, which, under this theory, a bleachery may destroy or withhold without accounting for them at all; in this case there are that number of yards, 386, for which

it is proposed that the bleachery shall not account; it proposes to settle for only 145 of the 531 yards damaged. The true solution is this: If 7,139 yards in the gray will produce 7,525 yards of finished goods, the 531 yards of finished goods that have been damaged represent 503 yards of goods in the gray, and this is the amount the bleachery should answer for if it is liable at all.

6. A has perishable merchandise stored in the cellar of B's warehouse. The cellar was considered a safe place for storing such merchandise. An ice gorge forms in a small stream that runs at some distance from the warehouse, the water backs up and threatens to destroy property in the rear of the gorge. To remedy this, C, the municipal government, send their fire boat, a force of men, and explosives, at night, without giving any notice to parties interested, and blow up the gorge. The volume of water thus liberated is too great for the capacity of the sewer; it backs up in the cellars and when B opens his warehouse in the morning, he finds some inches of water in his cellar and A's merchandise is damaged to the extent of several thousands of dollars. Where is A to look for indemnity under these circumstances?

A. The municipality is liable for the damage caused by its attempt to make a sewer do double duty with waste water.

7. Is a farmer, or other person, who uses barbed wire to fence in his property along a highway, liable for damage that may occur to horses or cattle, that may be driven or straying along the road?

A. In most of the Western States perhaps in all, barbed wire fences, when built according to certain requirements, are now declared by statute to be legal fences. The requirements are that the wire shall be of a certain size, that it shall be kept tightly stretched, and, generally, that some provision shall be made which shall render the fence less likely to damage animals.

8. An irresponsible party has an unmanageable horse which does damage. He refuses to pay damages, saying he has nothing but his horse and wagon and we cannot take that; he also claims that this horse was hired. Can we hold either party for damages?

A. The person having the care and control of a domestic animal is liable for any damage the animal may do while it is wrongfully in the place where the mischief is done. But

if the animal is in a place where it has a right to be the person in charge of it cannot be held unless he can be shown to have had a knowledge of its propensity for mischief.

9. If I sell 100 cases of eggs (Western firsts) to a house in a city to be delivered on March 1 and am unable to furnish the stock, can more be exacted from me than the top price of Western firsts as established by the recognized Produce Exchange?

A. If a seller of eggs or any other commodity is not ready to make delivery at the time and place named in the contract the buyer may go into the market at that time and place and make his purchase at the prevailing price; having done so he may recover of the original seller that amount, if any, which he was compelled to pay over and above the amount named in his contract. If he does not care to go into the market and make the purchase described he may still recover the same amount by way of damages—the excess of the market price at the time and place of delivery over the contract price; his recovery in this case is based upon the theory that if delivery had been made in accordance with his contract he could have sold the goods at the same time and place at an advance, and the measure of his loss is the amount of that advance.

10. A leases a loft to B and agrees to furnish him with power to run his machinery. A hires power from C, which is a building adjoining, and conducts this power into B's place. C had a fire and was unable to give A the hired power, thereby depriving B of his power and compelling him to stop working for fourteen days. Is A liable to B for the damage caused by not giving him power to run his plant? The lease from A to B does not say anything about "in case of fire."

A. If a landlord agrees to furnish power to his tenant, making no provision in the agreement for his release in case the service is interrupted by fire, he is bound to furnish the power so contracted for or to respond in damages. It is not a sufficient excuse for the landlord to say, as he does in this case, that the power was supplied by a third person, and that this supply was cut off by an accident for which he was not responsible. The occurrence of a fire is a possibility which

should be foreseen and guarded against by the contract. The fire, when it comes, is certain to cause a loss to some person, and the courts will allow the loss to fall where the contract of the parties has left it. The tenant, however, was bound to make the loss as light as possible. If the landlord did not promptly supply power from some other source, after the fire, it was the duty of the tenant to procure it for himself and charge the expense to the landlord. He could not suspend his business altogether for a long time, when it would have been possible for him to obtain the power promptly from some other source, and then call upon the landlord to make up the loss of this unnecessary suspension.

DEBTS.

1. An association proposes to hold an excursion, appoints one of its members as sole manager, allowing him as compensation a portion of the profits, if any, the association assuming the loss if not successful. An excursion committee is appointed, of which the manager is chairman. Should the excursion prove a failure and the loss be greater than the funds in the treasury can any of the members of the committee or the officers of the association be held personally liable for the deficiency?

A. In such a case as is here put neither the manager of the excursion nor the committee assisting him would be personally liable for the expense incurred, provided they should make it clear to those with whom they dealt that they were acting, not in their own behalf, but as agents of an association. The association itself will become primarily liable for the debts, and if it cannot pay them the amount may be recovered of the directors individually.

2. A man owes another $100 on an ordinary book account. The creditor agrees to give a receipt in full if his debtor will give him the sum of $50, there being no consideration for his so doing. A contends that suit can be brought to recover the other $50, which was, as stated, never paid, on the ground that there was no consideration. Is A correct?

A. In a case of this kind the creditor still has a valid claim for the remainder of his debt and he can collect it by

suit. Payment of part of a debt will never acquit the whole debt unless there is some consideration for the creditor's agreement that it shall have this effect or unless the creditor's agreement is put into the form of a sealed instrument; in the latter case the seal itself imports a consideration and the inference cannot be disputed.

3. An organization has many members in arrears for dues, and is about to adopt a scheme of posting on a bulletin board the standing of each and every member whether in arrears or not. Is there any law preventing the officers from taking such action?

A. All of the members of any society, club or other similar organization are entitled to know how faithfully any one of their fellow members is attending to his society duties and whether he is paying his dues promptly or not. If the officers, under proper by-laws, give this information to the members, taking reasonable care that it does not reach anyone not entitled to have it, there is no law known to us. under which they can be made to respond in damages. A bulletin board seen only by the members of the organization is a proper place in which to post such information.

DEBTORS AND CREDITORS.

1. I have a judgment against the manager of a large stock house for $320, which I have been unable to collect. The person in question has an income or rather salary of not less than $4,000 per annum, lives in good style, and displays a good watch, diamonds, etc. Can I not compel him to pay?

A. The judgment debtor can be brought up on examination and be obliged to give under oath a statement of all his effects and financial affairs. Unless he conceals his watch and diamonds and swears that he does not own them, he can be compelled by order of court to turn them over to the sheriff who has charge of the execution.

2. A man has been showing signs of mental incapacity for some time. I hold some notes against him which, when due, he failed to meet, but promised to do so in a few days. I waited three months or more and then sued him and put in a judgment. Upon having a search made I found he had been making transfers of his property

since last January. He employs a lawyer, and it looks as though he was taking advantage of his weak mind for his own benefit. Is there no way in which his creditors can obtain redress?

A. The statutes provide that "Every conveyance or assignment in writing or otherwise, of any estate or interest in lands, or in goods, or things in action, or upon the rents or profits thereof, made with intent to hinder, delay or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands and every bond or other evidence of debt given, suit commenced, decree or judgment suffered, with the like intent, as against the persons hindered, delayed or defrauded, shall be void." If our correspondent can prove that his debtor has transferred his property without consideration, or with intent to defraud his creditors, such transfers will be set aside and the property may be proceeded against as if it were still in the possession of the debtor.

3. A, who resides in Brooklyn, has a judgment against B, who resides in New York. Can B through some legal way or device visit Brooklyn regularly without being put under arrest or made to give bonds for city limits?

A. A judgment ordinarily does not carry with it any power of arrest. If this is one of the exceptional cases in which a power of arrest does go with the judgment, B may be arrested either in Brooklyn or New York, or anywhere else within the State and made to give bail "for the limits."

4. A buys a bill of goods on May 2 from B less 2 per cent, payable in ten days or thirty days net. He neglects to send a check until May 15. He also buys a bill of goods from B on May 10, another on May 18, another on May 24, and one on June 1, all of $75 each on the same terms. He sends checks as follows: One on May 20 for the May 10 bill; on May 28 for the bill of the 18th; on June 3 for the bill of May 24, and one on June 11 for the bill of June 1. B returned the check of June 11 stating "All bills are paid except that of May 2, and no discount can be allowed on that, as the time has elapsed." Apparently he has taken the check received on May 15 and credited the bill of May 10, and the check of May 20 and credited the May 18 bill, etc. I claim B had no right to do so, as no other bill was due and he was fully aware of what invoices the check was sent for, and if not acceptable he should have returned the check

sent on May 15. Each check shows that it was deposited on the day he received it, of which I have proof by vouchers from the bank. As B is the manufacturer of a private trade-mark article could he refuse to fill any more orders for non-payment under these circumstances?

A. When one person owes several different debts to another, it is always advisable for him when he makes a payment to declare expressly upon which debt he wishes the payment applied. If the debtor does not direct the application the creditor may credit the payment to any one of the accounts selected by himself. The rules are subject to these qualifications, however: The creditor in making the application is not allowed to do any palpable injustice to the debtor, and the debtor may be held to have made an implied application of the payment to one debt or another, in cases in which he has made no express application. The seller, however, can refuse to do business with the buyer hereafter if he is dissatisfied with the settlement of this case, or if, for any reason, he chooses to drop this name from his list of customers.

5. A buys a bill of goods of B but is unable to pay same. Shortly after he sells his business to C, the latter also assuming all liabilities. In case of legal action to whom is B to look for his money? Can A or C or both be held responsible for the amount?

A. If A owes money to B, and C agrees with A that he will pay the debt, the creditor B may take advantage of this agreement, or not, at his option. He may refuse to be bound or influenced by a contract to which he is not a party, and may still look exclusively to the original debtor, A; or he may look to C as the debtor primarily bound, and to A, the original debtor, as a surety.

6. A owes B $1,000 for merchandise delivered. This amount consists of various bills which are all materially overdue. The request for remittance brings forth a payment on account for a very small part of the total amount. Does B in accepting this payment on account forego the right to take legal steps to enforce the collection of the balance of the amount?

A. If A owes B $1,000 he can be compelled by suit to pay the whole of it unless B, for a valid consideration,

releases him from the obligation or some part of it, or unless B neglects his remedy so long that the statute of limitations deprives him of his right to sue. The fact that A pays part of the debt, and B accepts the payment, never can relieve A of his legal obligation to pay the remainder. On the contrary, there are cases in which such partial payment may make it easier for the creditor to enforce payment of the remainder. Thus, the fact that so much was paid is evidence that there was some indebtedness and it may open a way to prove how much that indebtedness amounted to. Partial payments are one means of "keeping the debt alive." A creditor need never hesitate to accept part of any debt through fear that such acceptance will interfere with his legal right to enforce payment of the remainder.

7. I was engaged by a manufacturer to sell his goods on the following basis: I was to travel through the States of Ohio, Indiana and Illinois on an 8 per cent commission basis; he was to advance my traveling expenses and allow me a drawing account of $20 per week additional. As I was unacquainted with the line and had no trade (only an acquaintance with the buyers) he agreed to give me a trial of six months, saying it would take that long to demonstrate what I could do. This agreement was all verbal. I started on my trip, but instead of the territory agreed on I had to go through New Jersey to towns of 500 population or thereabouts, where there was absolutely no chance of doing business on a high grade line of merchandise. At the end of the first week he failed to send the $20 to my family, and when I came back I obtained same after considerable trouble. Practically the same thing happened a second time. After dissatisfaction on my part I quit. I admit that the business done by me did not cover the amount I received, but contended that had I been sent to the territory agreed on I would have done better, as the cities were larger and would afford a better outlet for his goods. He now (after a silence of fifteen months) threatens suit for the money advanced me, $45. Please advise me how I stand in the matter.

A. The employer has no legal ground upon which to demand a return of the money paid by him in this case. If the $20 a week was in the nature of a salary, and not part of the 8 per cent. commission, then it was earned whether the salesman's efforts were successful or not; the difference between a salary and a commission is that the former is payable without regard to the results of the employe's efforts,

provided he is faithful in the discharge of his duty, while the latter is not earned unless the efforts of the employe are successful. But even if the $20 paid weekly was to be reckoned as part of the agent's commissions the employer cannot recover it now. He may have had valid grounds upon which to resist payment of this amount in the first place; if he had such grounds and intended to insist upon them the time to do so was before the money was paid. He did not do so, but paid the money with a full knowledge of all the facts in the case; that is the best possible evidence of his own opinion at the time that the money was justly due. He was not acting under coercion nor deceived as to the facts, and the courts will not assist him now in recovering money which he might have kept in the first place.

8. Please give me an outline of the law which aims to protect sellers of goods against a prompt re-sale of them by the purchaser, and such a disposition of the proceeds that the original seller has no means of collecting what is due him.

A. The object of the law, in both its original and amended form, is to make it illegal for a retail merchant to buy goods on credit and then sell them in bulk for cash and so deprive the wholesale dealer of his opportunity to take the goods themselves in satisfaction of his debt. It is provided that "the seller shall at least five days before such sale fully and truthfully answer in writing each and all inquiries, and if such seller shall knowingly, willfully make or deliver, or cause to be delivered, to such purchaser, any false or incomplete answers to such inquiries, said seller shall be deemed guilty of a misdemeanor."—N. Y. State law.

9. The firm whom we afterwards succeeded refused to settle the claim of an English house, basing their contention on the fact that the amount owing the foreign house was offset by a claim for more than the amount. They have in the past five years made a demand for this amount, which has been refused by the present concern. Is there any English law which could embarrass one of our firm while there on the ground of his being a foreigner or non-resident?

A. There is a statute in force in England which provides, with reference to suits for money alleged to be due and

owing to the plaintiff, that "where the plaintiff proves at any time before final judgment by evidence on oath to the satisfaction of a judge of one of the superior courts of law, that the plaintiff has good cause of action against the defendant to the amount of 50 pounds sterling or upwards, and that there is probable cause for believing that the defendant is about to quit England unless he be apprehended, and that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, such judge may in the prescribed manner order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of England without the leave of the court." It does not seem likely, however, from any fact stated by our correspondent, that the plaintiff will be able to make it appear that the defendant's absence from England will in any way "prejudice the plaintiff in the prosecution of his action." He will have had service upon the defendant before this question arises, and the absence of the defendant, after that, is not likely to make any difference to the plaintiff, unless the defendant has with him, and proposes to carry out of England with him, some personal property upon which the plaintiff might levy in satisfaction of his judgment.

10. What can be done in regard to a party against whom I have a judgment, who lives outside of the State, but visits the city frequently?

A. Take proceedings to collect on the judgment.

11. A mail carrier purchases from me feed and grain for his horses and gives me an order on the Postmaster to receive his quarterly check and pay my bill therefrom. The plan fails because the Postmaster claims that the carrier will not permit him to do it, and that he (the Postmaster) has no authority in the matter. Can it be made a fraudulent transaction, or can the Postmaster be held liable, he having promised to do as ordered?

A. No person can be compelled to pay the debt of another unless he has agreed to do so in writing. The mail

carrier, in the case proposed by our correspondent, was at liberty any time before the money was paid to revoke the authority which he had given to the postmaster to pay his debt for him. After he had revoked the authority the postmaster was no longer at liberty to pay the money due the carrier to the latter's creditor. In order to make the transaction fraudulent it will be necessary to show that it was entered into with an intent to deceive or defraud.

12. A customer of ours is in our debt. Two months ago he announced the sale of his business, and that he was running same temporarily for his successor. He also stated that he was financially embarrassed and could not pay anyone at present. We notice no change of name, and from appearances he has never sold out, and we think it is a scheme to defraud his creditors. Will you kindly inform us what redress we have, if any?

A. A creditor who has reason to believe that he has been defrauded by a debtor's pretended sale of his business, may proceed in either of two ways. He may either bring suit against his debtor for the money owing to him, and upon judgment an execution will be issued against the goods, which will raise the question of the validity of their transfer; or he may bring a suit to have the transfer declared void and set aside. Unless the debtor can show that the sale was made in good faith, for a valid consideration, and without collusion or intent to defraud his creditors, the transaction will be declared void, and the goods will be subject to the claims of his creditors.

13. A gave to B a quit claim deed of certain real estate which was at the time free from encumbrance. A's wife, however, did not release her right of dower. She and A are now living. C brought suit against A for alleged debt and secured judgment and execution in C's favor. Levy was then made on said real estate, and same is now advertised for sale by the sheriff to satisfy the execution. At the time of levy did A have any right, title or interest in said real estate, of which the sheriff can give a valid deed?

A. If A executes a deed of his real estate to B, even a quit claim deed, and if the transaction is valid as between the parties and done in good faith, then all of A's interest in that property is transferred to B, whether A's wife joins

in the deed or not. Thereafter A has no interest in the land which can be reached by an execution against him. Even if the transfer was not made in good faith, but was merely collusive and intended to hinder and delay the creditors of A, then a levy under execution is not the proper remedy. In such a case a creditor's bill must first be brought to investigate the transfer, determine whether it was made in good faith or not, and if it was not, to have it set aside and the property made available to the creditors of the grantor. Any levy made before this has been done is premature.

14. A is a resident of New York State; B is a resident of New Jersey. A sues B on a claim in a Philadelphia city court. B claims that the court has no jurisdiction. The court over-rules B on the ground that B transacts business in Philadelphia, although a resident of New Jersey. Have Pennsylvania courts any jurisdiction in the case, and can judgment be enforced under the decision? Must not the case be brought to the United States Court?

A. A, a resident of New York, may bring suit against B, a resident of New Jersey, in the courts of any State in which he can find B and serve a proper summons upon him. If he does not choose to stand suit in the courts of that State he may demand, as a right guaranteed by the Constitution of the United States, that the suit be removed to a Federal court; his failure to make such a demand is an acquiescence in the jurisdiction of the court in which suit was originally brought.

15. I have been shipping some goods to a Western concern and they have made a claim on certain goods shipped them. This bill they have not settled, but they continue paying later bills. When their checks arrived which they applied against the first bills following the bills in dispute I applied the checks on account of the disputed bill and wrote them that I had done so. They replied nothing to this. The account is now all settled and the balance of the statement shows the amount of the claim or disputed bill. Am I entitled to apply the checks in the way I did, as they did not dispute my doing so?

A. If the debtor chooses to carry this matter into court he can get a decision directing such application of his payments as he chose in the first place. The general rules upon the subject are these: When a debtor owes several accounts to the same creditor he may pay money on any one of the

accounts, ignoring the others; that is, the debtor has the first right to decide to which of his several accounts his payment shall be applied. If he makes no application the creditor may make it, and after he has done so the debtor's right of choice is gone. But in that case the courts generally hold that the creditor, in applying the money, must act fairly towards the debtor, and that he has no right to apply a payment to a disputed claim when there is another debt about which there is no dispute; if this were allowed the debtor might find his disputed claim settled, without his express consent, in a case in which he was right in his contention and the supposed debt was not really any debt at all. The only reason to suppose that he is not still entitled to insist upon that application of the money is because the creditor has informed him that it has been applied to another debt, and the debtor has not made any express objection to this application. This ground is not tenable. The debtor sent money and said: "Apply it to the payment of the undisputed claim." The creditor replied: "I have your money and have applied it upon the disputed claim." The debtor was not bound to make any answer to this and to keep up an interminable quarrel.

16. We are owed a bill by a building contractor for work on a completed building; other buildings are in course of construction on which mechanics' liens have been filed. In the event of this contractor being thrown into general bankruptcy do the filed mechanics' liens have preference over the claims of other creditors on the particular building on which liens are filed, or what is the course pursued in settling up the bankruptcy proceedings?

A. Ordinarily a trustee in bankruptcy takes only such an interest in the bankrupt's property as the bankrupt himself had before the trustee succeeded him. This is true under the bankruptcy law now in force except as to such liens as have been given by way of preference of one creditor over another, or such as have resulted from collusion between the bankrupt and one or more of his favored creditors. The rule, as it is probably now settled, is: "There are no equitable considerations in favor of the general creditors of a debtor which should defeat a mechanic's lien."

17. Several of our notes falling due payable at our office, were presented by the bank messenger for payment and upon our tendering him a check on our bank for same, he refused to accept it as payment unless it was certified by our bank. Please advise if his position was lawful.

A. The creditor or creditor's agent was acting clearly within his legal rights in this case. He is not bound to accept a check, certified or uncertified. He is not even bound to accept every form of currency that circulates among us under the name of money. A creditor may insist upon his right to receive legal tender, and the statutes state which forms of money are legal tender and which are not.

18. A husband in unfortunate speculation loses a large portion of his wife's money. He subsequently attempts to recover his losses and opens a bank account in his name as trustee for her. Can this money so deposited in trust for the wife be attached upon any judgment secured against the husband?

A. A husband may very properly make a present to his wife, or deposit money in a bank in trust for her, though his debts are at the time greater than he can pay immediately. But if his action is intended to hinder, delay or defraud his creditors it may be set aside as illegal, and the money or property be taken as still belonging to the husband and as a fund upon which his creditors have a right to rely for payment of their debts.

19. About five years ago A, a citizen of Russia, loaned B, a citizen of Russia, a sum of money on a note. Soon afterward B left Russia for America, leaving the note unpaid. A also comes to America several years later, and finds B in New York in possession of property. Is there any way that A can collect the debt?

A. A can collect money from B by suit brought in any State of the Union in which B can be found and service had upon him, provided B actually owes the money and provided suit is not barred by the statute of limitations in force in the State in which it is proposed to sue. Whether A and B are or were citizens of this country or another, and whether the debt was incurred here or elsewhere, are matters of no importance. A debtor cannot move and leave his

obligations behind him. Suit on an ordinary contract debt, such as our correspondent describes, is barred in six years in many States, and the creditor may sue within the six years of the due date of the debt.

20. A buys merchandise from B and gives the latter his note for the value of same. When the note becomes due it is not paid and goes to protest. Can B, under such circumstances, put A into bankruptcy, or can he make an attachment on his belongings to cover the face value of the note?

A. Attachment laws vary in different States; this case is governed by those of New York and is not one in which immediate attachment may be made. The creditor may sue the debtor, get judgment, and then attach the property of the judgment debtor. The only cases in which property may be attached before judgment are those in which the debt has been fraudulently contracted or in which there is danger that the debtor will remove from the State and take his personal property with him. No person can be forced into bankruptcy unless he has committed an act of bankruptcy, and such an act, in the language of the existing statute, "shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, with intent to prefer such creditors over his other creditors while insolvent, any portion of his property, to one or more of his creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground." The creditor's first move, in the case our correspondent puts, must be to obtain a judgment against his debtor; if this is not promptly satisfied various means of enforcing it will then be open to him.

21. We issued a marine certificate for a country insurance agent, he acting as a broker in the transaction, securing the insurance for the shipper of the cargo. We have been unable to collect from the country agent, and we beg to inquire from you if the shipper is not legally responsible for the premium. We are resident in Georgia, while the country agent and shippers are residents of Florida. The Florida insurance law is not applicable to marine risks.

A. When marine insurance is taken out on a cargo, and accepted by the shipper, the shipper becomes liable for the premium. This liability continues until the premium is paid either to the company issuing the policy or to an agent authorized by it to accept money in its behalf. Payment to an agent of the insured, or to any person other than an agent of the company, does not bind the company unless the money actually reaches its treasury. The burden is upon the shipper to prove, either that the money did finally reach the company, or else that the person to whom he paid it was an agent of the company, or that the shipper had a right to consider him to be such agent. If the debtor cannot prove one of these facts the creditor still has a valid claim against him, and the debtor must seek recovery of the person to whom he paid the money.

22. Upon the death of A his wife continued the business and advertised in a county paper for all bills against the estate to be presented at once, to close the estate, etc. A physician has been in attendance upon A for years, no bill having been rendered by him. He is repeatedly requested to send in his bill for the balance still due him, if any, but has failed to comply with the request, meeting it only with the remark that he would try to attend to same, etc. Should the physician die suddenly, could his estate send in a bill to A's estate for any amount?

A. It does not appear that the physician, in this case, has lost all right against the estate of A, as yet, and whatever right belongs to him at the time of his death will belong to his estate after his death. The most important right a creditor loses by neglecting to put in his claim with reasonable promptness against the estate of a decedent, is the right to share in the distribution if the estate is not sufficient to pay all the debts. The executor or administrator advertises for

claims during the statutory period, and then pays such as have been presented; they are paid in full if the property of the estate is sufficient, or pro rata if it is not sufficient to pay all. If a claim is presented after that time it is sufficient for the executor or administrator to answer that no more money belonging to the estate is left in his hands; in that case the creditor can collect nothing. But if the property of the estate is still sufficient to pay the debt, and if the statute of limitations has not run against it, payment must be made. In the case here in question the estate of the physician, after his death, cannot, of course, put in any sort of indefinite claim and demand its payment. The claim must be itemized; it must show the date on which the services were rendered, and, as nearly as possible, the nature of the services, with adequate proof of the fact that such services were actually rendered on that day.

23. I have secured judgment in New York against a citizen of New Jersey who is employed in the former place, but has all his property at his home in New Jersey. Can I levy upon that property under my New York judgment, and sell it to satisfy the same?

A. A judgment obtained in one State cannot be enforced directly, as a judgment, in another. But it may be made the basis of another suit, in the second State, and a judgment thus obtained may be there enforced against the property of the defendant. The second suit will be little more than a mere formality. No evidence on the part of the plaintiff will be required except a transcript of the judgment already obtained; and the defendant cannot meet this unless he can show that he was not properly served with notice of the suit out of which the former judgment grew.

24. A surgeon operated on my two little ones several months ago, agreeing not to expect the money until I could pay him conveniently. I have paid some on account and expect to pay the rest as soon as I can, but he now threatens to attach my salary, which is only moderate and some weeks I need all of it for immediate necessities. Can he attach my salary?

A. After a judgment has been rendered (in N. Y.), provided the judgment be upon a debt for necessaries sold, or

for work performed in a family as a domestic, or for services rendered by an employe of the judgment creditor, if an execution has issued under the judgment and has been returned wholly or partly unsatisfied, there are cases in which part of the wages or salary due, or to become due, to the debtor may be taken in satisfaction of the judgment. That this may be done the wages or salary must exceed $20 per week; then the court may direct that part of the wages or salary, not exceeding 10 per cent., be taken to satisfy the judgment, the deduction being made as often as an instalment of wages or salary falls due. Except in such a case as is here described, a levy cannot be made upon the "earnings of the judgment debtor for his personal services rendered within 60 days * * * where it is made to appear, by his oath or otherwise, that those earnings are necessary for the use of a family, wholly or partly supported by his labor." As to attachment before a judgment has been rendered, there is no fact stated by our correspondent justifying such a course in this case; as a rule this is allowed only when there has been some fraud or deceit involved in the transaction out of which the debt originated, or when there seems to be an intention on the part of the debtor to place his property or earnings beyond the reach of his creditor in case the latter afterwards secures a judgment.

25. A creditor receives a promissory note from his debtor in settlement of a current account. The note is made payable to the debtor's own order. The creditor sells the note without his indorsement. The debtor pays the note when due, but becomes bankrupt within four months of settlement of the account by note. Is the creditor obliged to return the proceeds of the note?

A. When a creditor sells and transfers the note evidencing the debt he ceases to be a creditor on that account. If the debtor pays money upon it, and then becomes bankrupt within the legal period, it is the creditor to whom payment was made, the purchaser of the note, who must make restitution, if any is to be made.

26. Can the income from an estate be attached, or any part thereof, for a just debt, same being for a loan for which I hold a

receipt? The debtor has no other property or income except the above mentioned.

A. If a judgment debtor has an income from an estate, which is paid to him from time to time and which is his absolute property, that can be levied upon in satisfaction of the judgment just like any other property belonging to the debtor. It sometimes happens that the former owner of the estate has been unwilling to trust the beneficiary with the disposition of the property, and has left it in trust. The terms of the trust may be, and commonly are, such that the trustee is not at liberty to hand the money over to creditors of the beneficiary, but is bound to use it in some specific manner other than this. Money left in trust for the debtor in that way probably could not be reached in such a case as our correspondent puts; but if the money is payable to the debtor unconditionally it is liable for his debts like money coming to him from any other source.

27. Are both parties liable for the full amount when a tenant opens an account jointly with his landlord, each intending to pay one-half the account?

A. When two or more persons are liable for the same debt the contract should show whether they are liable jointly, or jointly and severally. If there is nothing in the contract itself or in the surrounding circumstances to lead to a different conclusion the courts will hold it to be a joint liability only, and suit must be brought against both parties, if there are only two, or against all the parties if there are more than two. Plaintiff's failure to sue all, or both, of the joint parties if he is compelled to sue at all, may be set up in bar of the action, and it will be treated like any other valid defense. Having obtained judgment against all of the joint parties the creditor may levy upon the property of any one or more of them, leaving them to adjust the matter among themselves by contribution.

28. If I have judgment against a man on a contract for non-delivery of goods, can I obtain a court order directing the debtor's

employer to pay to me a certain part of the debtor's wage, each time as it comes due, until my judgment is satisfied, or even partly satisfied?

A. Our correspondent is directed to the following cases which throw some light on the attitude of the courts towards the debtor and creditor in such a case as he has in mind, and which show that wages to be earned in the future cannot be reached in the way he seeks to reach them: 18 Abb, Pr., 265; 13 Barb., 335; 4 Civ. Proc. R., 16, and 3 St. Rep., 287. A good many other cases will be found cited in the course of the last decision.

29. 1. A merchant receives a check for $2,000, with the remark on the back of it "in full payment up to date" while the account is disputed. If the check is kept in a safe during the time that the dispute is being settled by correspondence, should it be deposited after a certain time, and it happened that there was not sufficient funds any more, or if the bank had failed, what would be the position of the person in whose favor the check had been made?

2. Also, should the check have been sent to the bank on which it is drawn to be certified before the questions in dispute are settled would it imply that the clause "in full up to date" is accepted?

A. 1. If the amount of a debt is not certain, or if there is a well-founded and honest dispute as to the proper amount, and if the debtor sends a check marked "payment in full," the creditor cannot accept the check without acknowledging that the debt is fully paid. If he keeps the check for an unreasonable length of time without notifying the debtor that he does not intend to accept it, this in itself will amount to an implied acceptance. The only safe plan, in any case, is to return the check immediately if the creditor does not intend to accept it as payment in full. If he holds it during the remainder of the day on which he receives it and the whole of the next day, he will hold it thereafter at his own risk in case of the bank's failure. If he decides afterwards to cash the check, and finds that the debtor has not enough money on deposit then to pay it, he may recover the amount from the depositor by suit; but if the bank fails (after the second day) and the debtor has enough on deposit at the

time of the failure to pay the check, the loss will fall upon the creditor, and not upon the debtor.

2. When the holder of a check takes it to the bank and has it certified the result, as between him and the drawer of the check, is precisely the same as if he had collected the money and then deposited it in the same bank. He will be held to have accepted the check just as he would if he had collected the money upon it. He has removed the money entirely beyond the control of the depositor, has brought it entirely under his own control and whether he leaves it with the banker who had it in the first place, or puts it away in his own safe, is a matter of no importance.

30. If a firm receives a promissory note for three months can they return the note and put a lien on property belonging to or in which the maker has an equity? Or do they have to allow the note to run its course, and are they prohibited from filing a lien until the maturity of aforesaid note?

A. When a creditor accepts his debtor's note that fact, as a rule, imports an implied contract on the creditor's part to await the maturity of the note before attempting to collect the debt represented by it or to demand any other security for its payment. We suppose, however, that the lien our correspondent has in mind is a mechanic's lien; that is, a lien governed by special statutory rules. With regard to the filing of a mechanic's lien by one who holds a note the rule is as follows: If the note is to run for more than ninety days, that is, for a period beyond which a lien can be filed, the mere fact that the creditor has accepted such a note is usually interpreted as a waiver of his right to file a lien. This is not the case, however, where the note is for ninety days or less. In such a case the creditor can file his mechanic's lien as if no note had been given. If the note is paid at maturity all proceedings under the lien come to an end, of course, and if it is not paid the lienor is in position to go ahead and enforce his lien. The same is true of any other proceedings he may desire to take for his own protection. Any preliminary steps which do not interfere with the debtor's right to hold and use his property may be taken

while the note is still outstanding; but maturity of the note and failure to pay it must come before the final steps are taken.

31. A resident of New Jersey draws an interest-bearing note payable in New York City. The maker dies before the note becomes due. Can interest to maturity of the note be collected from the estate? Can interest from maturity to the time of payment be so collected?

A. That part of a decedent's estate which passes under his will or under the intestate laws of his State is only so much as may be left after payment of his debts. Claims of creditors come first always, and they are as valid against the estate as they were against its owner before his death. In the case here put interest can be collected on this note to the day of its maturity, under the contract, and interest may be collected for the time that has elapsed since maturity, as a penalty for failure to pay at the due date.

DEEDS.

1. 1. What is the status of a deed? Is there recourse in case of defective title, or is the deed merely a bill of sale, and can the seller claim that the buyer should have searched the title thoroughly before purchasing?

2. Is the lawyer who searches the title responsible in any way?

3. Must a deed specify buildings as well as particulars in regard to land? Does this apply to country as well as city property, and is the law the same in California as in New York State?

A. 1. Deeds are executed in a great variety of forms and for a large number of different purposes. What is commonly thought of when the word is mentioned is a deed for the transfer of title to real estate, and of this kind of deed alone there are a number of varieties. A deed to real estate may be so worded that it becomes a mere bill of sale, or a quit claim deed; in that case the seller is not responsible for any defect in the title; he simply says in effect: "I hereby transfer to the purchaser any title I may chance to have in the premises, be it little or much, good or bad." In many cases the grantor does not claim to have, or suppose that he

does have, any interest at all in the property; but the purchaser has reason to suppose that a valid claim may some time be made in favor of the grantor, or at least a claim which may serve to cast some kind of a cloud upon the title, and he induces the grantor, for a small consideration, to make over to him any claim or title that may be supposed to exist in favor of the grantor. A warranty deed is the only one of many forms wherein the grantor transfers the fee of the land to the grantee, declaring that the grantor's title is good and perfect, and binding himself and his heirs forever to warrant and defend such title. In that case the grantor becomes liable for any defect in the title.

2. A lawyer or other person who undertakes to search a a title for a prospective purchaser is liable as any other agent is. He does not agree that he will make no mistake whatever; but he holds himself out as having a reasonable degree of skill in such business, and he is bound by an implied agreement to use such skill, and not to be negligent, in making the search.

3. A deed to real estate passes all buildings permanently attached to it, if the buildings belong to the grantor, even though they are not mentioned in the deed. If the buildings belong to some one else, a lessee, for example, and he has an agreement with the land-owner allowing him to remove the buildings at the end of his term, then a deed which did not mention the buildings would not transfer them, provided the agreement as to their removal had been duly recorded.

2. A person residing in New York wishes to deed property which he owns in Florida. Can a New York notary public take his acknowledgment to same? Are there any States who would refuse an acknowledgment taken before a New York notary, certified by the County Clerk? If so, which are they?

A. A deed to lands in Florida, if executed in another State, will be valid if acknowledged before "any judge or clerk of a court of record, notary public, justice of the peace, or other officer authorized by the laws of such State, terri-

tory or district, to take acknowledgment of deeds therein, or before any commissioner appointed by the governor of such State for that purpose." Nearly all of the States and territories admit to record and consider valid deeds to real estate within their boundaries, if acknowledged before a notary public in another State. Some do this by naming that officer specifically, and some by providing for an acknowledgment such as would be valid in the jurisdiction where made. The States and territories which form an exception to this rule are the following: A deed to lands in Georgia, if executed without the State, must be attested by "a commissioner of deeds for the State of Georgia or by a judge of a court of record in the State where executed, with a certificate of the clerk, under the seal of such court, of the genuineness of the signature of such judge." New York admits to record deeds made outside the State and acknowledged before the judges of the United States courts, of the supreme, superior, or circuit court of any State or territory, mayors of cities, or commissioners of the State of New York. If the person acknowledging the deed is a citizen of another State, the acknowledgment may be made before any officer authorized by the laws of that State to take acknowledgments. A deed to South Carolina lands made outside the State will not be admitted to record until one of the subscribing witnesses has appeared before a commissioner of deeds of South Carolina, or before a clerk of a court of record, or a notary public, and made affidavit that he saw the grantor sign, seal and deliver the document as his act and deed.

3. A man sells some real estate and executes a deed before a notary prior to the time fixed upon to pass title, and gives the deed into the hands of a third party whom he authorizes, verbally, to receive the money and deliver the deed on the date agreed upon. The seller dies before the time arranged for passing title, and when that time arrives the buyer demurs paying the money to the third party on the ground that his authority to receive the money ceased at the seller's death. Is he right?

A. When an owner of real estate executes a deed to it and places it in escrow to be delivered on a certain date, or

on the happening of a certain event, the whole transaction is practically complete. Handing over the deed and accepting the money or other consideration is a mere formality which forms no part of the essence of the transaction; that lies in the contract formerly entered into and in the execution of the deed. This much having been attended to, completion of the deal is not to be frustrated by the death of either party. The person who holds the deed in escrow is still authorized to deliver it up at the time appointed, or on the happening of the event upon which delivery was to be made; he is also authorized to receive the purchase price if he ever had such authority.

4. H buys a piece of property from P. An error is made in the deed and H builds on the wrong lot. This is not discovered for several years—until after the death of H. When the defect in the title is discovered P gives a quit claim deed to the widow of H. P's wife is not able to join in this deed, as she is hopelessly insane. H mortgaged the property for part of the purchase price, and after his death his widow purchased this mortgage and had it assigned to herself. H left no will. As it now stands the widow and only son are occupying a place their only title to which is a quit claim deed. No question has ever been raised as to their right to the place. How can the widow obtain a clear title? Would this object be attained if she allowed the taxes to remain unpaid till the property was advertised and sold for taxes by the city, and bid in by herself either as heir or as mortgagee, and obtained a tax sale deed from the city authorities? Would such a deed be considered a good title by the courts in case of a transfer of the property?

A. If the person who executes a deed is actual owner of the property, a quit-claim deed will transfer the title as effectually as any other. In a very large majority of cases no advantage is ever taken, or needs to be taken, of the covenant contained in a warranty deed, even where such has been given. If the vendor is not owner of the property it is a great advantage, of course, to be able to proceed against him under the warranty; but if the abstract shows title in him a quit-claim deed signed by him is all that is necessary to transfer it. When he who has taken title under such a deed wishes to transfer the property to another he may find that the purchaser will prefer that the vendor's title should

have come through a warranty deed, but this objection will often be waived if the vendor himself is willing to give such a deed. The weak point about a tax title is the necessity of showing that all of the myriad formalities, as to advertisement, notice, publication, and the actual management of the sale itself, were complied with to their minutest details. If this has been done, and the fact can be affirmatively proved, the holder of a tax title, when the time for redemption has passed and all the formalities attending the issue and delivery of the final deed have been carefully looked after, is in position to hold against all claimants and to give an indefeasible title to another.

5. A gentleman is joint owner with a brother in a piece of productive real estate. He desires to give a deed of this half interest to the minor children of one of his brothers (the one who owns the other half). He has other property, real and personal, and does not care to make a will, but wishes that property divided as the law directs. Can he execute such a deed, and will it be valid if it is not recorded or made public until after his death?

A. In such a case as our correspondent puts the joint owner of the real estate could make a will, if he chose to do so, which would dispose of his real estate interests according to his wishes, and make no mention of any other property; in that case all his other possessions, real and personal, would be disposed of precisely as if he had made no will at all. Such a deed as he proposes to make, however, will be effective to pass the property if it is properly executed and delivered, though it be not recorded or made public in any way until after his death. Such a deed will not be binding upon any person who has no knowledge of it, and to whom the property may be conveyed or mortgaged after the execution of the unregistered deed; but if a will should be made disposing of the land the testator, in that case also, would be at liberty to deal with the property after the execution of the will as freely as before. Nothing will interfere with his freedom in dealing with the land except a deed making a present conveyance of it and duly recorded.

6. A and B purchased a piece of unimproved real estate in Florida. The deed was recorded in the name of A; A and B each paid $300 in cash on account at the time of purchase, and A gave a mortgage on the property for the balance of the purchase price, $2,400, at five years' time. The mortgage has been sold several times and is now held by a bank. B has nothing to show that he is in any way interested in the property; B has added improvements, buildings, fences, tools, well, etc., which it was verbally agreed between A and B should be the property of B; B now desires to establish his legal right to one-half of the property and to assume responsibility for one-half of the $2,400 note and have such documents properly recorded. How can it be done?

A. All the objects which our correspondent seeks to accomplish may be reached by one instrument. This should be a deed in which A transfers to B the whole of his interest in the buildings, fences, &c., and the fee simple of an undivided half of the realty. Upon his part and as a consideration for the deed B should make himself personally liable for and agree to pay one-half the amount still due on the purchase price. The mortgage will continue as a lien upon the whole of the estate after a half interest in it is transferred to B as it is now.

7. A sold B his farm. The sale was made by a writing as follows: "This is to certify that I sold my farm to B for $1,000, to be paid when deeds were delivered." Signed A. Witnessed by C. A died before the deeds were delivered. B has possession of the farm. Can he hold it?

A. There are only two elements of doubt in this case. The contract must describe the property sufficiently for identification. If A has more than one farm a memorandum like this would not sufficiently describe either. If he has only one farm the contract will be taken to refer to it. Then the other party to the contract must have shown in some way that he is willing to be bound by it. If it is a valid contract at all it will bind both parties equally, and the seller alone cannot, of course, bind the buyer simply by writing a document like this, if there is no evidence that the buyer assents to the agreement. If he went into possession as a result of this contract that is a sufficient acceptance of it,

and both parties are bound; but if the buyer was already in possession, as tenant, for example, there is no fact alleged by our correspondent to show that he was a party to the contract or that he accepted it with sufficient promptness. If this can be shown in any satisfactory manner the contract becomes a binding one and the buyer can enforce it, notwithstanding the death of the seller before a formal deed was executed.

DEFINITIONS AND TERMS.

1. You will confer a favor by stating the most approved way of closing, at the end of the year, a business "Stock" account. The items entered to the credit at the beginning of the year were: (1), Merchandise; (2), Bills Receivable; (3), Cash in Bank; (4), Cash on Hand; (5), Furniture, etc.

A. "Stock" account is a term used by some authors of works on bookkeeping to designate the capital in a business carried on or owned by one person, and that appears to be what said account represents in this instance. The entries at the end of the year in such an account should be the balance of the "Profit and Loss" account and the owner's personal account. The balance of "Stock" account will then show the amount of capital in the business; that is, the surplus of assets over liabilities. The mode of proceeding should be to credit "Profit and Loss" account with the profits of the year and debit it with the "Expenses and Losses." If the profits exceed the expenses and losses there will be a balance to be credited to "Stock" account; if the reverse is the case, there will be a balance to be debited to "Stock" account. Then debit "Stock" account with the sums drawn by the owner for his own purpose, and which should be kept, up to that time, in his personal account. The amount remaining to the credit in "Stock" account at the end of the year, compared with the amount credited at the beginning of the year, will then show whether the capital has increased or diminished. "Stock" account, strictly speaking, is never "closed," except by the withdrawal, or loss, of the entire capital and the winding up of the business.

2. Will you please inform me through the columns of your paper what the difference is in a shipment made "f. o. b." from that made "at ship's side"? I would like to know which is most advantageous to the purchaser.

A. Usually these terms are interchangeable, because goods delivered at the ship's side are generally put on board without expense to either seller or buyer. But if the goods are of a kind which the ship will not put on board free, or if there is any doubt about it, the term "f. o. b." is more advantageous to the purchaser.

3. Is the debenture of a corporation a mortgage? Is the debenture of a corporation necessarily secured by a mortgage on property, or by any other evidence of indebtedness?

A. The word is derived from the Latin *debentur, debere,* to owe. The name was first given to receipts for salary signed by officers of the king, because these were in the Latin tongue and began "Debentur mihi." In England the name is always applied to deeds of mortgage given by railroad companies for borrowed money; and also to bonds and other written securities (where there is no mortgage) issued by municipal authority, and to formal securities issued in the name of private companies. It follows that a "debenture" need not be connected in any way with a mortgage, and "debenture bonds" frequently have no such security.

4. The charter party reads: "Cargo to be discharged with all customary dispatch, discharge to be at the rate of not less than three hundred tons per working day." Assuming the vessel is unable to discharge such a quantity during the first few days would the receiver be bound to receive on subsequent days a larger quantity than three hundred tons per day if the vessel were able to do so?

A. If a charter party provides that "cargo is to be discharged with all customary dispatch, discharge to be at the rate of not less than 300 tons per working day," and if the vessel is unable to discharge such a quantity daily, for the first few days, a larger quantity may be delivered daily thereafter, and the consignee will be expected to take care of it. The stipulation is not that 300 tons shall be delivered on each working day, but that the whole cargo shall be dis-

charged at the rate of 300 tons per day at least. If nothing is delivered on the first day, and nothing on the second day, and then 900 tons are delivered on the third day, that is a delivery "at the rate of 300 tons per day."

5. For imported goods sold "ex-dock," who is to pay the duty and other expenses? What is meant by selling "ex-dock"?

A. Unless there is an understanding between the parties or a trade usage to the contrary the buyer of goods deliverable "ex-dock" pays the duty and all other expenses accruing after the discharge of the vessel. Delivery ex-dock is delivery upon discharge from the vessel, and the buyer must be ready to accept the goods then and there.

6. What is the meaning of the commercial term c. i. f. and also the meaning of the term c. and f.?

A. The letters c. i. f. are an abbreviation of the words cost, insurance, freight. When a seller offers goods at a certain price c. i. f., he means that for the price named he will supply the goods (c), will insure them during transportation (i), and will pay the freight upon them (f). The letters c. and f. represent cost and freight. The difference between the two terms is that one of them includes insurance while the other does not.

7. A predicts that a certain mill's fabric will open at 10 cents. The goods are sold at this price, but before they are billed or shipped the mill decides to bill the goods at 9½ cents. Which is the opening price?

A. Our correspondent himself says: "The goods are sold at this price," 10 cents. If 10 cents is the price at which the first goods were sold then 10 cents was unquestionably the opening price; nothing that might happen afterwards could alter that fact. What happened was this: The goods were sold at 10 cents; then the seller, for reasons of his own, made the buyer a present of one-half cent, that half cent being part of the selling price, and a part which could have been collected by suit as easily as the other 9½ cents.

8. 1. A foreign correspondent bought from me 200 bales of cotton goods on c. i. f., c. i. terms (cost, freight and insurance, com-

mission included) to a certain port. The documents (bill of lading and certificate of insurance) were attached to my draft drawn on my correspondent. The goods arrived in a damaged condition, but the loss did not amount to 5 per cent of the amount insured and therefore the insurance company will not accept the claim. My correspondents now claim the amount of loss from me. Am I liable? Is not the insurance company liable? The goods were shipped from the port of New York.

2. What is the difference between c. i. f., c. i. terms and f. o. b. (free —— harbor) terms?

A. 1. In the policies of American marine insurance companies the minimum amount of loss for which the company assumes liability is 5 per cent. It frequently happens, however, that when exceptional perils have been the cause of the loss claims for a lower percentage are responded to. But the company clearly has a legal right in any case to stand strictly upon the terms of its agreement. There is nothing in our correspondent's letter to show that he is liable for the damage in this case. A seller of goods who undertakes to deliver them at the end of the route is bound to deliver them there in good condition and, as between himself and the buyer, he is bound to make good a loss or damage arising from whatever cause during the transportation. But a sale upon c. i. f., c. i. terms does not require the seller to make delivery at the end of the route; he can make a legal delivery to the carrier, treating the latter as the buyer's agent. But if the seller takes the bill of lading to his own order, as he sometimes does in order to secure payment of the purchase price, he reserves title to the goods in himself until the bill of lading, properly indorsed, is delivered to the buyer and any damage or loss occurring while the goods are the property of the seller must fall upon him.

2. Where goods are sold c. i. f., c. i. (cost, insurance, freight, commissions included), the price named in the contract covers all these items. When goods are sold f. o. b. (or free on board in any particular harbor) the seller is simply bound, for the price named, to supply the goods and pay the expense of carrying them to the dock and having

them placed on board. Freight and insurance and, in short, all charges not necessarily incurred in getting the goods on board the vessel, are to be borne by the buyer. If the harbor named should be that at the end of the transportation, of course all expenses necessary to place the goods in that position, including freight, would fall upon the seller.

9. In the case of a person holding a certificate for one hundred shares of stock, presenting same to the company and receiving two new certificates of fifty shares each, does it constitute a transfer and should it be entered on the transfer book? If so, should it be entered as one transfer, or as two? Also, if a person holding a certificate for one hundred shares turns same in and requests a new certificate made out to himself for fifty shares, and two of twenty-five shares each to other persons, how many transfers does that constitute? Is the certificate reissued to himself called a transfer, as in the case of certificates issued to other persons?

A. The first case put by our correspondent should be entered upon the books in order to show what shares are out and in what form. It is not, however, what is technically known as a transfer. It is what transfer officers call a "split." The question is one which is hardly likely to come before the courts now as involving any legal point, but when the War Revenue law was in force and there was a tax on all transfers of corporate shares a transaction of this kind was held not to be a transfer, within the meaning of that law, and not to be taxable. The second case, that in which a certificate for 100 shares is surrendered and three new certificates are taken out, one of 50 shares to the original holder and two of 25 shares each to other persons—this constitutes two transfers, as the word is commonly understood among those most conversant with the matter.

10. Please give the definition of a "vacant" and of an "unoccupied" dwelling and define the distinction between them.

A. Policies were formerly made to read so as to become invalid in case the building stood for a given number of days, without permission of the insurer, "vacant and unoccupied." It was very generally supposed that the two words were practically synonymous. A summer residence was burned at

a time when no one lived in it, though it was still fully furnished and ready for occupancy at a moment's notice. Suit was brought upon the policy and carried to the highest court. It was there held that to avoid such a policy the building must be both vacant and unoccupied; that this building was unoccupied, but was not vacant, and that the policy was in force and valid. Thereupon the wording of the clause was changed from "vacant and unoccupied" to "vacant or unoccupied." Another summer residence was burned under practically the same conditions as before. The house was fully furnished and in the care of a farmer living nearby. Some member of the farmer's family visited the house and aired it once a week, and the owner and his wife visited it once a fortnight; but no one made it a place of residence. The house was burned, and suit was brought upon the policy and carried to the Court of Appeals. That court held that the house was not vacant, but was unoccupied; that it came under the description of a house "vacant or unoccupied," and that the policy was void.

11. A vessel is chartered, and the charter party reads "quick dispatch discharging." Please advise me what constitutes quick dispatch.

A. The words "quick dispatch" in a charter party are to be interpreted in accordance with the customs of the port and its facilities, and also, sometimes, in accordance with the nature of the goods. It is the usual quick dispatch of the port where delivery is to be made, as distinguished from the common or usual dispatch employed there. It requires haste—the ordinary haste of quick dispatch.

12. A mill selling agent sells a prospective customer five bales of sheeting as a sample lot. The mill ships five bales of 1,500 yards each. These proving satisfactory the purchaser gives an order for fifty bales. The mill ships fifty bales of 1,200 yards each and declares the order completed. The purchaser demands 300 yards more for each bale. Is the mill bound to ship this 15,000 yards?

A. When the courts are called upon to decree the enforcement of a contract, or to assess damages for a breach of it, their first task is to determine just what the parties to

the contract bound themselves to do. The contract will be enforced precisely as it was made if it involves no fraud or deceit on either side and if it is not contrary to public policy. If there is any word of doubtful meaning in the agreement its definition is to be found by reference to dictionaries and other authoritative works of reference, by the testimony of those conversant with the business, and, especially by reference, wherever this is possible, to previous contracts between the same parties wherein the same word has been used. Whatever the word "bale" may mean in general, or in connection with any particular kind of goods, there is no reason why A and B, in their transactions with each other, should not be allowed to adopt their own definition. If there is evidence that they have done so this will be conclusive. If A has tendered, and B without protest has accepted any given number of yards as constituting a bale, this is the best possible evidence as to what they mean by a bale, and the court will give it weight accordingly. In the case our correspondent puts, the mill has tendered five different parcels each containing 1,500 yards, clearly showing its definition of "bale." The purchaser examined these parcels and accepted the mill's definition. Then the purchaser ordered fifty other bales, without stating how many yards each was to contain, but under such circumstances as to show very plainly that he had in mind the kind of bales he had previously received. These bales had been sent him as a sample, in all respects, and he had accepted them as satisfactory in all respects, and ordered more like them. The mill was bound to send bales of 1,500 yards each, and it is liable for its failure to do so.

13. What is the meaning of the terms "London terms" and "London landed terms," and how do these compare with "c. i. f. London" terms on drugs in general and oil of peppermint in bottles and tins.

A. What are commonly known as "London terms" are certain provisions in the contract of carriage; they do not affect buyer and seller except as to the conditions under which delivery is to be made and accepted. The terms are

as follows: "The shipowners shall be entitled to land these goods on the quays of the dock where the steamer discharges immediately on her arrival, and upon the goods being so landed the shipowners' responsibility shall cease. This clause is to form part of this bill of lading, and any words at variance with it are hereby cancelled." If goods are sold "c. i. f. London" the price named in the contract pays for the goods themselves, together with freight upon them and insurance during transportation. If they are sold in accordance with "London terms" or "London landed terms," the buyer is to take charge of them and assume responsibility for their safety from the moment they are landed as described above.

14. What is the meaning of the term, "delivered gross for net"?

A. The following letter from a merchant who is frequently a party to contracts in which the term is used, makes its meaning perfectly clear:

The term is used quite often in commercial transactions and is always specified whenever goods are sold and are to be settled for on the basis of gross weight for net weight; in other words, there is no tare allowance, and the buyer has to pay for the weight of the package on a pro rata basis of the price for the merchandise. This term is usually only applied when there is no charge to be made for the packages, and where the difference between the gross weight and the net weight is to offset the probable cost of the package. Of course, before such a term, "delivered gross for net," is to be specified in a sale the buyer should be careful to ascertain first the style of package that the seller is to use for the packing of the goods, and that the style of package mutually agreed upon be in the contract. To illustrate: A sells to B about 1,000 lbs. of, say, feathers to be packed in strong sacks at, say, 6 cents per lb. "gross for net." These 1,000 lbs. are packed and delivered in 6 sacks weighing 1,018 lbs.; B must pay for 1,018 lbs. at 6 cents, the gross weight of these 6 sacks.

15. We have an order from Australia on c. i. f. x. terms. We understand that c. i. f. means cost, insurance and freight, but we are not aware what is intended by the letter "x." Please inform us.

A. We are informed by one of the largest exporters from this market to Australia that the letters c. i. f. x. are used there to mean cost, insurance, freight and exchange.

16. A parcel of land in this State was advertised to be sold at public auction. Bids were made by several parties, but inasmuch as the highest bid was only $13 per front foot the auctioneer declined to sell at that price and adjourned the sale. There was no consideration passed by the party who made the bid of $13. I claim that the auctioneer must start the sale again as though there had not been any

bids. He claims the right to start the sale at the bid before named. We met again and because there were so few persons present the auctioneer again adjourned the sale. Am I right in claiming that the auctioneer must start the sale as if there had been no bids?

A. An auctioneer is an agent of the owner of the property to be sold, and is bound to obey his instructions. If the owner wishes to place upon the property what is known as an "upset price"—that is, a price below which he will not sell it—there is no legal objection to his doing so; this he may do whether the property is being offered for the first time or not. If he is entitled to refuse all bids made on the first occasion and the property is properly withdrawn, he is not bound to offer it for sale at any subsequent time; if he does offer it again it is a wholly new transaction, and the sale goes on as if there had been no previous attempt to sell the same property.

17. A steamship company issues a bill of lading at a European port for 210 packages of merchandise for shipment to New York, inserting a clause "four packages short shipped," and a banker makes payment for the entire lot. On arrival only 206 packages are delivered, freight, however, being demanded and paid on the whole 210. After the arrival of several succeeding vessels, without the missing bales, a claim is made on the steamer's agents for the packages not received, and response is made that they never received the packages in question and are therefore not responsible for their non-delivery. Are they correct?

A. The consignee is entitled to have the excess freight returned to him in this case; that was paid to the steamship company and it was not earned. He cannot call upon the steamship company to repay money paid by him to the consignor or his agent for the missing packages, unless he can show that these were delivered to the company. This bill of lading showed that only 206 packages had been actually shipped. It did not show, nor purport to show, that the missing four packages had been delivered to the steamship company; it left that matter in doubt.

18. What is the difference between shipping "hatter's fur" to Danbury, Conn., at "owner's risk; released" or shipping same goods without this remark? There is a very large difference in the freight

charged by the railroad when the words "owner's risk; released" are not specified on their bill of lading.

A. The words "owner's risk; released" were at one time more common on bills of lading than they are now. Some carriers that formerly used them rather freely have since abandoned their use altogether. The words have never received any judicial construction. Carriers intended them to mean that the owner of the goods accepted all risks of every kind arising out of their transportation and delivery, and that he would not look to the carrier in any case. It seems, however, that the words were sometimes written or printed, "owner's risk released." In that form, if they have any meaning at all, they would seem to indicate that the owner was to be at no risk, but that the whole liability was accepted by the carrier.

19. According to the laws of Germany, a company incorporated over there and having offices in New York must bear the same firm name in Germany and New York. A certain company is incorporated over there with the words "Gesellschaft mit beschraenkter Haftung" after the firm name, which means "Company with limited liabilities." Now, as this term could not be very well used over here, we would like to know if it would be legal (complying with both the laws of Germany and the United States) if the company over here is called "Limited," which is a literal translation of the above-mentioned term.

A. We are not in position to point out any definite decision of the German courts covering the question raised by our correspondent. We are of opinion, however, that it will be sufficient to use the English word "limited," instead of the several German words, in this country. We think, that is, that our correspondent's statement of the case is an accurate one. He says: "A certain company is incorporated over there with the words * * * after the firm name." In short, these words are not really part of the firm or company name, but are simply descriptive words added to such name to show to what class the company belongs. Thus, in England, where limited liability companies are common, the law always speaks of the word "limited" as something distinct from the name of the company, providing, for example, that signs, letter-heads, &c.,

shall contain the "name of such company with the addition of the word 'limited.'"

20. What is the meaning of the term "net cash"? Is it not tacitly understood to mean payable 30 days net?

A. The term "net cash" has a different meaning in different lines of business. Originally it had no other meaning except "cash on delivery of goods." In fact, the word "cash" alone had this meaning when it was first used between buyer and seller; but sellers were naturally desirous of increasing their trade, and as a means to this end they began to allow credits of 10 to 30 days in settlement of cash sales. When this had gone on a while the term "cash" was found to have taken on a new meaning, and it was held to imply, what merchants had by a uniform course of dealing treated it as implying, namely, payment at the end of 10 days in one line of business, or at the end of 30 or more days in another line. Then it was necessary to find another term to mean what "cash" had meant in the first place and would have continued to mean except for the indulgence of sellers. "Net cash" was the term adopted to this end, and it served the purpose until it had traveled precisely the same road taken by its predecessor. If, in any trade, buyers who have agreed to pay net cash are always required to pay for the goods promptly upon their delivery, "net cash" in that trade preserves its original signification and means payment on delivery; but if sellers, with practically no exceptions, allow buyers 10 days in which to pay for goods sold for "net cash," or 30, or any other specific number of days, then "net cash" in that trade means money paid within 10, or 30, or some other definite number of days after delivery of the goods; the usages of the particular trade must be looked into to determine the matter.

21. 1. Our forwarding agent in Liverpool, on his memorandum of charges forwarded on the bill of lading, states the amount of insurance, f. p. a., which we understand as free of particular average. Please inform us as to the responsibility of the insurance company when the goods are insured f. p. a.

2. Also enlighten us in regard to the following: Supposing the

shipment has a market value in England of £100, and is insured for £130, rate ¼ per cent from Liverpool to New York; if part of the said shipment is totally damaged by sea water, can we claim from the insurance company the amount of the damaged part in proportion to the total of insurance on the whole shipment, or is the company responsible for the difference in the market value of the goods when in sound condition in this country (duty paid) and the amount realized from the sale of the damaged goods at public auction, the sale being recommended by the agent of the company in this city?

A. 1. "Free of particular average," in marine insurance, means that the insurance is not intended to cover any claim for damage or partial damage, that is, it excludes all claims arising from special damage to those particular goods. If the goods are totally lost the insurance covers that loss; or if any loss is incurred, or sacrifice made, in behalf of the goods insured that also is covered.

2. In such cases as our correspondent here puts the sum insured is the basis of the claim always. The percentage of loss of the goods at the port of destination is applied to the sum insured and the result is the amount to be claimed under the insurance. Market value is of no importance except as it may serve to determine the percentage of loss.

22. How is the following contract construed: "New York, September —, ——. Sold for account of . . . about 15,000 bales of hemp, to be shipped by steamers to New York, 5,000 bales during January, 5,000 bales during February and 5,000 bales during March, etc."; 10,000 bales were shipped somewhat later than the specified dates and the sellers now wish to cancel the unfilled portion?

A. The view the courts take of a contract of this kind, a contract for the sale of "about" such a quantity of goods is this: That the introduction of the word "about" does not authorize the seller deliberately to make his delivery greater or less than the quantity specifically named; the effect of the qualifying word is simply to excuse him if, inadvertently, or as a result of circumstances over which he has no control, he tenders somewhat more or less than the contract calls for, while using his best efforts to deliver precisely that quantity. Thus a seller who agrees to deliver about 15,000 bales of hemp is bound to deliver as nearly that pre-

cise amount as he can; if he fails through accident, inadvertence, or from any cause except deliberate intent, and the discrepancy is not too large, the word "about" will excuse him; but he has no excuse at all for a willful failure to deliver 15,000 bales. It follows that if he has succeeded in delivering 5,000 bales in one installment, and the same number in another installment; he cannot claim a greater variation in the third installment than such proportion of that one installment as the word "about" is capable of covering. If he does not intend to deliver the third installment at all it is quite possible the courts would not allow him to assume that if he should undertake to deliver it he would accidentally miss the precise amount by 500 bales; however that may be, there is certainly no ground upon which he could claim a larger allowance.

23. What constitutes a bill of lading? Some people claim that the individual receipt, which contains the conditions of the uniform bill of lading, when signed by the pier agents who receive the goods, is a bill of lading. Others claim that the document is not a bill of lading until the freight rates are inserted.

A. The two definitions of a bill of lading most commonly quoted and relied upon in this country are taken respectively from Porter's work on "Bills of Lading," and from a decision rendered by the Supreme Court of the United States. Porter's definition is this: "A bill of lading is a written acknowledgment by a carrier of the receipt of certain goods, and an agreement for a consideration to transport and deliver the same at a specified place to a person therein named or to his order." The Supreme Court definition is: "A written acknowledgment signed by the master that he has received the goods therein described from the shipper, to be transported on the terms therein expressed to the described place of destination and there to be delivered to the consignee or parties therein designated." This latter definition is evidently made with reference only to bills issued by a carrier by water. The writers recognize and describe shipping receipts, way bills and various other documents issued to the shipper in some cases.

24. Please tell me the original and the present practical meaning of the phrase "Force majeure" as used in commercial transactions.

A. "Force majeure" is a French commercial term used in connection with contracts of various kinds, and put forward as a sufficient excuse for a breach of contract. Literally the term means superior force. It stands for all that is meant in an English contract by inevitable accident, the act of God, governmental interference, and an act of the public enemy. The force may be a convulsion of nature or the act of man. Among the former are floods, hurricanes, earthquakes, lightning and the ravages of insects. (Sickness or death of one of the parties was also included under the Roman civil law, but they are now excluded.)

25. What are the customary proceedings in making a call loan in New York banking circles? We understand that the loans are generally made for one day.

A. A call loan is made, not for a single day, but for an indefinite time, not less than a day. The lender may demand, or call in, the money any day he chooses, after the day on which it was loaned, and the borrower may repay it, at his option, on any day after that on which it was borrowed. The rule is subject to this single exception: that a loan made on Friday is good until the following Monday; no loans are made on Saturday except in rare instances.

DELIVERY.

1. On November 24 (the last day on which the delivery could be made) at 5 p. m., we received an arrival notice and examination order for a car of goods from the seller. We waived our examination rights, agreeing to accept the goods without examination, and demanded the document transferring the goods to us. The seller was unable to deliver the documents until November 25, and we contended that this was not a delivery in accordance with the contract, and declined to accept the goods. It is the custom of the trade to tender an arrival notice and examination order, as the goods were sold "cash against documents after arrival and prompt examination of goods." In this case it was too late for us to examine the goods on the 24th and we therefore waived our examination right. Were we legally right in refusing the goods, unless the documents transferring them to us were delivered on the 24th?

A. It was expressly stipulated and agreed, as part of this contract, that the goods were to be delivered on November 24. Whenever the buyer and seller have mutually agreed upon a precise date for delivery the courts will hold that "time is of the essence of the contract," and a failure to make a tender of the goods upon the day named will release the buyer if he chooses to be released. See 115 U. S., 188. In the case our correspondent puts one clause of the contract was as follows: "Cash against documents after arrival and prompt examination of goods." It would have been possible, therefore, for the seller to make a tender on the day named in the contract, which would not have been such a tender as the buyer was bound to accept. In short, the seller was under contract, not only to deliver the goods on November 24, but to deliver them at such an hour of that day that time would still remain, before the end of the day, to make such an inspection and examination as the contract expressly called for.

2. A bill of lading reading as follows * * * "now lying in the port of Liverpool and bound for the city of New York * * * merchandise, being marked and numbered etc., etc., and are to be delivered in like good order and condition *at* the city of New York." The agents of the line or vessel say if consignees of goods will pay wharfage they will land the goods *in* New York, otherwise in Hoboken. According to the reading of the bill of lading as above, cannot the consignees claim a delivery of their goods in the city of New York? There seems to be a question as to the word *at* the city of New York.

A. Whether the bill of lading reads "at the port of New York" or "at the city of New York," in either case a discharge at Hoboken is not a good delivery unless the consignee consents thereto. Most consignees are willing to receive their goods at Hoboken if the vessel will pay the cost of ferrying the carts to and fro when the property is needed here. The United States court is our authority.

3. When shares of stock are "in escrow" does the third party hold the certificate of stock as well as the legal document?

A. When shares of stock are placed in escrow the important delivery is that of the certificates themselves. The

document showing that they were delivered in escrow need not be in any particular form. All that is necessary is to use such language as will show that the delivery was not intended to be final or to pass the title, but that it was a mere conditional delivery to become effective, if at all, at a certain definite time or upon the fulfillment of certain specified conditions. Then, when the proper time arrives, or the conditions have been fulfilled, a final and effective delivery may be made.

4. A sells B a quantity of foreign merchandise ex ship New York, and on its arrival gives B a delivery order for the goods, which are out of the ship, but before B can remove them they are destroyed by fire. Is A's contract with B completed, and must B pay for the goods?

A. If A sells to B a lot of goods which are at the time in the hands of some third person, as a warehouseman or a carrier, a good delivery is made when the document representing the goods is tendered to B and accepted by him. Questions as to proper custody or damage arising thereafter are to be settled between B and the custodian of the goods or the insurer, as the case may be. In the present case the goods were to be delivered at New York, and they had arrived here and been discharged. They were too bulky, probably, to be capable of actual manual delivery from one person to another, and nothing could be done except make such a delivery of the paper documents representing the goods. These papers were tendered to B and accepted by him. A valid delivery, transferring the title and the risk, was made at that moment; if this was not a valid delivery then such a delivery could not be made at all, because A had already done all that he could do in the way of divesting himself of title and control and transferring these to B. If B had deposited the order with the steamship clerk and had sent a lighter to the dock to receive the goods before the time of the fire, the case would have been no stronger except that there would have been somewhat more evidence of an actual delivery and acceptance.

DEMURRAGE.

1. We have a steamer coming North with a cargo, which we sell here for consumption. We are the chartered owners. When the vessel arrives the purchaser cannot give docking orders, but says he will do so the following day—perhaps. The custom of the port of New York is, I believe, that the vessel must receive orders within twenty-four hours to commence discharging within the said twenty-four hours after entry at Custom House. Can the purchaser of the cargo (say the steamer arrived on Tuesday morning and entered at noon the same day), give orders Wednesday noon to send the vessel into berth to begin discharging some time Thursday morning, without incurring demurrage?

A. The true rule as to demurrage in a case of this kind we believe to be that insisted upon by our correspondent. It is the rule of the United States courts, and, so far as we can find, there is no authority opposed to it. Thus, in a case reported in 66 Fed. R., 344, the court held that "the provision in a bill of lading that 24 hours after arrival in port, and notice thereof to the consignee, there shall be allowed a fixed rate of unloading per day, and that the consignee shall pay demurrage for any excess of time required, casts upon the consignee any loss of time resulting from delay in pointing out the place of discharge, but imposes on the master the duty of bringing his vessel to the berth indicated; and for any delay in so doing, not arising from the unsuitableness of the berth or its approaches, or fault of the consignee, the master is responsible, and must bear the loss."

2. The following were the conditions of a freight contract: "The said A to deliver the freight in quantities as required free on board the vessels of the said B as fast as possible, but at not less than the rate of 800 tons per day, Sundays and holidays only to count as working days when used. B to pay dispatch money at the rate of —— dollars per day for the time saved in loading, on the basis of 800 tons per day. A to pay demurrage for time used over and above the said lay days at the rate of —— dollars per day." The vessel having gone on demurrage, is it allowable for B to charge demurrage for Sundays or holidays?

A. Where a charter party allows a certain number of days for loading and discharging, and provides that if the

vessel is longer delayed the charterers shall pay demurrage, they are entitled only to days as they run and not to the specified number of working days (16 Blatch., 565, and Lindsay v. Cusimano, 12 Fed. Rep., 503). If only working days are to be counted either among lay days or among those for which demurrage is to be collected, that fact should be distinctly made a part of the contract. Where Sundays and holidays are expressly excepted from the lay days, as in the case quoted by our correspondent, that fact would have some weight in determining whether they were to be excepted also after the vessel had gone on demurrage.

3. 1. On arrival of a vessel in another State or country, under a charter-party wherein the essence of the contract is the dispatch for loading, it is found that no cargo is ready and that the vessel cannot be loaded in the specified time. Is the master released from the contract, or can the charterer avail himself of the demurrage penalty and hold the vessel idle? If so, for how long?

2. When the vessel is loaded, and demurrage has accrued under such charter-party, if the master refuses to sign a clean bill of lading in the usual form, what recourse has the shipper, who is not a party to the contract nor liable for demurrage?

A. 1. If besides stipulating lay days, the charter-party provides that the charterer or consignee may detain the vessel at so much a day for a certain period, the master is bound to wait during the whole period if requested to do so. If the charter-party provides for demurrage, without stipulating the number of days, the master is bound to wait a reasonable time, the usages of the port and the nature of the cargo being taken into consideration, and the jury are the judges of what is a reasonable time.

2. The master must sign the bill of lading when it is presented to him; but this obligation extends only to an acknowledgment of receipt of the goods and an engagement to carry and deliver. He is not bound to specify the freight, nor the conditions of the carriage, he has no authority to sign in blank, he cannot waive the lien of the owners given under the charter-party, nor can the liabilities arising under the charter-party be varied by him.

DEPOSITORS.

(See also Banks.)

1. If a depositor in a national bank dies leaving a balance to his credit on the books of the bank, and the bank holds unmatured paper against the depositor, has the bank a right to charge up that note before maturity? And, if not, can the bank hold the balance due on the account until the note matures and then charge it up?

A. The courts have decided that if a depositor in a bank becomes insolvent, owing the institution upon obligations which have not matured, the funds may be held and the debt to the bank not yet due be pleaded as an offset to a demand for the balance standing to the customer's credit. In a recent reply we assumed the right of a bank to cling to the deposits until the paper it held had matured, and we have since found that both in this country and England, the right to set-off the unmatured claim against the balance of an insolvent depositor has been legally established. But when the depositor dies the case is different. The representative of the estate, unless it is insolvent, can claim the balance on deposit, and compel the bank to wait like other creditors for the payment of any contingent or unmatured obligation.

DIRECTORS.

1. Please inform me whether by making a short lease not to be recorded with a brewery corporation the signature of the president or any officer of the corporation is sufficient by adding the words "by order of the board of directors" under the signature. The lease is to be only for two years and not acknowledged by notary public.

A. If a lease is entered into by order of directors or other officers qualified to bind the corporation by a lease, the corporation may be bound under any signature appended to the lease by direction of these officers. The important questions are these: Was the lease agreed to by officers having power to bind the corporation? Was the signature, whatever it may be, affixed by direction of those officers and with intent to bind the corporation? These questions being answered in the affirmative the lease is valid and is binding upon the corporation.

2. 1. If a quorum of the directors of a corporation are present will business transacted by them be legal if notice of the meeting has not been sent to all of the directors? If not, how can business transacted as above be made legal?

2. Is it necessary to have the minutes of a regular meeting of the directors of a corporation approved to make them legal?

A. 1. The necessity of giving notice of a meeting to directors is not insisted upon by the courts to the same extent as that of giving notice to stockholders when a meeting of the latter is to be held. Of all stated meetings, that is, of all provided for by the fundamental law of the corporation or its by-laws, the directors have implied notice from the first. Of all other meetings they should have special, express notice in due time. If such notice is not given the acts of the meeting will probably be voidable, and may be altogether void. If a majority of the directors have due notice of the meeting, and appear and take part in it, and any motion is passed by so large a majority that it would not have been lost had all the absent directors attended and voted against it, it is doubtful whether the courts would annul the action.

2. The minutes of a regular meeting of directors are assumed to be correct if no notice is taken of them by a subsequent meeting; approval is not necessary to make them presumptively a correct record of the action of the meeting. The minutes, however, are not part of the official action of the board until they are read before the board and formally approved by it. This is the reason of their subsequent approval, that they may be conclusive evidence of the board's action, instead of mere presumptive evidence.

DISCOUNTS.

1. We made a purchase of material, the order being accepted by the seller under date of April 7, the acceptance containing the following clause: "F. o. b. your premises, with the usual 2 per cent discount for ten days." A bill for the material was rendered under date of April 20, but the car with the material did not arrive on our premises until May 12. The seller claims that the ten days dates from the date of the bill and not from the receipt of the goods, and refuses

our check sent to them on May 21. Are we not entitled to the discount?

A. The buyer's contention is clearly sound in this case. Frequently the days within which discount may be claimed begin to count from the date of the bill; but there are cases in which delivery is made and title passes at the place of sale. In the case under consideration the seller undertook to carry the goods to the buyer's premises and deliver them there. The buyer is under no sort of obligation to the seller until the goods have been tendered at that place and the buyer has had an opportunity to inspect them preparatory to acceptance. If the goods do not arrive the buyer is not bound to pay anything. If they arrive, but are not such as the contract calls for, he is not bound to pay anything.

2. About April 15 Smith sells a car load of goods to Jones. The terms on the sale are cash 30 days on cars at Jones's works (which are located in another State). On April 27 Smith ships and charges the goods and mails the invoice. On April 30 Smith receives bill of lading, showing the goods are consigned to Jones, and on same day mails bill of lading to Jones and writes as follows: "Knowing that you have always shown a disposition to take advantage of any cash discount I will allow, I beg to offer you in this instance a discount of 1 per cent for immediate cash settlement." On May 13 Smith receives Jones' check for amount of invoice, less 1 per cent. Smith returns the check and states that in view of the fact that thirteen days have elapsed since his offer of 1 per cent for immediate cash settlement, he does not consider that he (Jones) is entitled to the 1 per cent, as his settlement was not an immediate cash one, and that to avail himself of the 1 per cent he should have remitted immediately upon receipt of the offer. Jones contends that the terms of the sale were on "cars at his station," and it was part of Smith's contract so to deliver the goods, and until the contract was completed, he (Jones) did not owe Smith one cent. The goods were not delivered until May 12, and immediately upon their receipt Jones sends Smith a check, less the 1 per cent. Jones contends that he (Jones) interpreted the offer of 1 per cent discount for immediate cash settlement to mean payment immediately after he became the owner of the goods in question, and that he did not become the owner of them until they were delivered on cars at his station on May 12, as per terms of contract, notwithstanding the fact that the bill of lading (showing the shipment) was delivered to him April 30. Will you please let me know who is legally right in this matter?

A. The phrase "immediate cash settlement" in the absence of any further qualifying words must be held to mean "immediately on the receipt of this letter" and not "immediately on the receipt of the goods." If a New York merchant sells a lot of goods to a dealer in Oregon at a certain price delivered in Portland, he dates the bill and the beginning of the credit on the day of sale or shipment, and not on the day of delivery.

3. Is a customer, legally or morally, entitled to any discount for having neglected to pay in accordance with terms of bill? Price is 10 cents per yard, we will say, and if paid in ten days he is entitled to 7 per cent discount for cash, from total amount of bill, or, if in sixty days, to 5 per cent.

A. It is the equivalent of this: A buys of B a bill of goods, terms, 5 per cent. off for cash. B does not send for the money under 30, perhaps 60 days, and A does not call and pay it. At length a collector calls, and A tenders a check for the face of the bill, less 5 per cent. It would be considered a good payment. The seller is entitled to his money immediately, but custom gives the buyer a little grace, and, if he is not asked to pay, it is understood that the seller waives his right, and not that the buyer has forfeited his title to the discount.

4. We are selling goods, three months open account, or 2 per cent discount, thirty days. Our customers give us a note as soon as the order is filled, deducting the discount and adding interest at 6 per cent, which they claim is all right. Then, on the other hand, we are selling to other concerns on same terms, and they let the account stand open three months, at the expiration of which term they give us notes with interest for one, two or three months. Are these transactions in accordance with business rules generally acknowledged and respected?

A. Neither of the settlements described conform in letter or spirit to the terms of the sale. The buyer can only profit by the discount of 2 per cent. by paying cash at the end of 30 days; and he is not entitled to credit beyond the 3 months. If notes are given, instead of deducting discount and adding interest from day of sale, no discount should be allowed, and the interest should be reckoned only from the

end of 3 months to the due date of the note. The "other concerns," who let the account stand open 3 months and then give a note adding interest from that date, propose nothing but what is fair, if our correspondent is willing to grant the extension.

DIVORCE.

1. Will you please state upon what grounds a man may obtain a divorce, and upon what grounds a woman may? A says three in the first case and two in the last, and B insists only two in each case.

A. Both are wrong. The only ground for a full divorce from a valid marriage in most States is unfaithfulness to the marriage vow.

2. By mutual consent a decree of divorce was granted by a California court, whereby the father was granted the custody of one child and the mother the custody of another, and upon the death of either parent the guardianship of the child in their care is to revert to the surviving parent. The mother moves to the State of New York, bringing with her the child of which she is guardian. Will the laws of the State of New York uphold the decree of the California court in the possession of that child, she being a competent guardian?

A. In the absence of fraud, when a court of competent jurisdiction has granted a divorce, valid according to the law of the State in which it is granted, and not obnoxious to principles of interstate comity, and when the decree has been made matter of record in the court, it becomes binding in other States. But this is not strictly true of all collateral questions. A decree of any tribunal as to the custody of a child is not final. The same tribunal, or any other within whose jurisdiction the child may be, may consider the question upon the facts as they then exist, and determine whether the child's welfare demands that any change shall be made as to its custody. The same California statute which gives to the court the power in divorce suits "to make such order for the maintenance and education of the children of the marriage as may be just," declares also that the court "may at any time thereafter annul, vary or modify such order, as the interest and welfare of the children may require."

3. A and B were married and had two children, both of whom died. The eldest child was put in the receiving vault in Greenwood on March 16, 1888, and remains there still. Shortly after that A and B were divorced. The husband holds the receipt from the Greenwood authorities and refuses either to let the body be buried by the mother or to bury it himself. First, has not the mother as much right to the body as the father? Second, how is the mother to proceed to have the child properly buried?

A. Ordinarily the father is regarded in New York State as the legal custodian of the children. This rule yields, however, when it can be shown that the circumstances of a special case are such that to follow the rule would work a wrong or a hardship. In the case put by our correspondent, if the mother can show to the satisfaction of the court which granted the divorce, or to the satisfaction of any court of equity that justice demands that the child be delivered to her for burial, a decree will be rendered accordingly.

4. Can a man who has real estate transfer or give clear title to property without his wife's signature, providing he has secured a divorce on the grounds of her desertion by moving from one State to another State?

A. It is provided by law that "in case of a divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed." A mere limited divorce, or legal separation, is not sufficient to deprive the wife of her dower right. There is only one kind of misconduct of the wife which entitles the husband to an absolute divorce, and the wife still retains her dower right, in spite of a divorce granted to the husband in any State, unless the decree was based upon this kind of misconduct. It was held that "wilful desertion and absence of a wife from her husband, for which he has procured an absolute divorce in another State which is valid and effectual against the wife, is not such misconduct as will deprive her of dower in his real estate in his own State. To deprive her of dower here, the misconduct must be adultery, and where the decree was based on her abandonment of her husband, she does not forfeit her right, although the effect of the decree under the statutes of the State where it was rendered was to deprive her of dower." In such a

case as our correspondent puts the wife's dower right is still preserved to her and a deed in which she does not join will not pass perfect title to her husband's land.

DRAFTS.

(See also Notes.)

1. We cashed a draft for a client of ours, drawn in his favor, by a firm on their bank; we forwarded draft by first mail to our correspondents, for collection and credit, and it has been returned to us with the words "payment stopped," written on a slip, inclosed with it. As innocent holders, could the drawer legally stop payment to us?

A. The maker of a draft or check may stop the payment of it at any time before the bank has made the debt its own by binding itself to the holder to pay the paper. The bank is the drawer's agent, and its duty is to pay out or withhold his money as he directs. It owes no duty to the drawee unless it has certified the check, or in some other manner bound itself to pay it. At any time before this the drawer may revoke the order contained in his draft or check, and the bank must obey. The remedy of the holder then is to proceed as in the case of any other dishonored paper; in this way, by making out a good title, he may recover the face of the paper, and any damages which the drawer's refusal to pay may have caused him.

2. A merchant advises his banker that he has drawn draft against his account, payable at three days' sight. Has banker the right on presentation to accept the draft "payable at —— bank on demand," and charge at once to drawer's account, or does drawer retain the right to stop payment of the draft within six days after it is accepted?

A. It is very common for bankers to cash drafts at sight where they are for small amounts, although by their terms payment cannot be demanded until three or even six days afterwards, but he cannot do this unless the holder consents. The drawer could countermand the payment at any time before the draft was presented, but after it was presented and accepted, his right to stop payment ceases.

3. 1. Has the payee or an indorser of a check or draft the right

to stop its payment, or should the bank on whom the draft is made accept such orders from the drawer only?

2. If a bank through error pays a check on which payment has been stopped by the proper authority, does it become responsible for the amount?

A. 1. Only the drawer of a check can order the payment stopped; but drawees will sometimes, to further the ends of justice, withhold payment on the request of intermediate indorsers, to enable the latter to checkmate some attempted fraud.

2. A bank cannot charge a check, whose payment has been countermanded, to the drawer's account. If paid by inadvertence, the drawee must stand in the gap.

4. Is it necessary when drawing upon a firm or other drawee to insert "Messrs." or "Mr." before the name of the firm or individual drawn upon? Is it not perfectly proper merely to say "To J. B. Smith & Co."?

A. There is no necessity whatever for the use of titles in a draft, and many large houses make no use of them either in a draft or check.

5. If a bank presents a draft drawn at "two days after sight" after 3 o'clock P. M., must it be accepted on that day or the day following?

A. The drawee of any such draft has the right to demand 24 hours for consideration, but when it is accepted the acceptance must be of the date on which it was presented. The bank is under no obligation to present it before three o'clock. Any hour will do if the drawee can be found by the holder.

6. A bank outside of New York bought in the usual course a draft at twenty days' sight on a house in New York and sent it for collection to its correspondent bank in New York with bill of lading attached, with the following instructions: "If ——, upon acceptance of the draft, will give you satisfactory assurances that draft will be promptly paid at maturity, then hand over bill of lading to them at once; if not, hold until draft matures."

The New York bank replied by its cashier: "Your instructions were so vague I hardly knew what to do as ——, the party on whom the draft was drawn, refused to accept without delivery of the bill of

lading. After investigating him as well as I could, I surrendered the bill of lading and took his acceptances." When the draft matured the drawee refused to pay, and draft went to protest, giving several excuses, among them that goods were too high and were not according to order. The party drawing denied this and offered to take back the goods and to take up his draft. The drawee, however, could not produce the goods, was soon after sold out by the sheriff for some trifling amount, has disappeared from view, and up to now the draft has not been collected, nor is there much chance that it ever will be.

Later on the cashier of the New York bank advised, when inclosing notices of protest: "My first impulse was to demand payment at sight, which I did, but payment was refused and acceptance was refused unless I would deliver the goods. I had several interviews with ——, investigated his standing, visited his store in order to form an opinion of his business, and finally, when I was compelled to decide between putting goods in store or delivering to —— upon his positive assurance that the acceptance would be met at maturity, I surrendered bill of lading, believing that it certainly would be promptly paid."

The bank sending the draft for collection claimed that instructions had not been complied with; that bill of lading was sent to secure payment and not to secure acceptance of draft; that a mere verbal promise was not "a satisfactory assurance" and was not so good as the written acceptance, which alone they did not regard as securing them; that goods if put in store could have been returned to the drawer, but the goods having been parted with they could not collect protested draft from him, and therefore hold the New York bank responsible for the amount of draft. Is the New York bank liable?

A. The New York bank is not legally liable for the failure of the drawee or for any of the loss. The Supreme Court of the United States has held that without positive instructions to the contrary the collecting agent is obliged to surrender the bill of lading on the acceptance of the draft attached to it. If the instructions accompanying this bill had forbidden its surrender without ample security for the payment of the draft, the failure to exact any security would have rendered the agent liable. Even if the instructions had required the agent to satisfy himself of the drawee's solvency he would not be liable if he had made inquiries and become satisfied. But in the case under review he was to surrender the bill if the drawee himself gave "satisfactory

assurances" that he would pay the draft promptly. He did give such assurances and this discharges the collecting bank of all liability.

7. Inclosed find copy of a paper deposited with us by C R as security for money due us by the said C R. This acceptance was deposited with us last spring some time after it was due. At R's request we held it until about the first of this year, when R failing to pay the money due us we demanded payment of D B. He refuses to pay it, and gives as a reason that he accepted the draft as an accommodation to R, to be placed in the bank as security for a debt due the bank by R, which debt R subsequently paid, and he (B) supposed the draft destroyed. But it seems that R after taking the draft out of the bank where it was first deposited, deposited it with us as collateral security for money due us. We knew nothing of the transaction with the bank, and thought we were the first holders of the draft. Is D B obliged to pay us?

A. The draft drawn by C R and accepted by D B was payable November 8, and our correspondent took it six months after it was due. If they had taken it before it was due the acceptor, D B, would be held, as his reason for giving it to C R would have nothing to do with his liability to the present holder. But a man who takes a draft that is past due takes it subject to the equities between the original parties. In plain terms our correspondent having taken this acceptance after it was due and payable had no more claim on D B than C R had when he passed it to him. As this was *nil,* the draft is worthless..

8. 1. Is there any difference as regards the legality of the acceptation of a draft whether such acceptation is dated or not?

2. If one purchases a note from a man to whose order it is drawn, "the maker of it being his mother as executrix to settle an estate," at a discount from its face of more than legal interest, can any of the interested parties legally avoid paying it by the plea of usury?

A. 1. The acceptance of a draft is equally legal whether dated or not. If there is a date it becomes prima facie evidence of the time when the acceptance was made, but this evidence may be rebutted. If there is no date the acceptance will be presumed to have been made within a reasonable time after the bill was drawn and prior to the time fixed for

payment. When a draft is payable at a given time after sight, the date is important as fixing the date when it is due.

2. Usury consists in taking more than the legal rate of interest for the use of money or forbearance to demand it. To constitute usury the first requisite is that the transaction must involve such a loan or forbearance. Whatever does not amount to this cannot be tainted with usury. Accordingly a promissory note, valid in its inception, as in the case put by our correspondent, may be sold at a greater discount than the legal rate of interest, and the transaction is not usurious.

9. Our bankers here, when they have drafts to collect, are in the habit of notifying by telephone or sending mail notices to the effect that they hold the draft, and if not paid by a certain date it will be considered a refusal to pay. In all cases the payer is expected to walk to the bank and settle. The question is, are they not bound to present the draft to the party or parties whom it is against before they can decide or report that payment has been refused?

A. If the address of the drawee is known, the draft cannot be protested until it is presented to him for acceptance or payment, as the case may require. A demand for either cannot be made legally, by telephone or mail; a personal presentation is required.

10. A customer sends us a draft on a bank out of town which reads: "Pay to the order of A or bearer," and instructs us to send it direct to the bank for collection instead of depositing it in our bank. The cashier of the bank on which the draft is made returns it to us indorsed, "Returned for proper indorsement." We claim that we were not compelled to indorse a draft that was made payable to the order of any person or bearer, but the bank cashier contends that he had the right to demand an indorsement. Which is right?

A. A check drawn to "H, or bearer," does not require any indorsement, but one drawn to "the order of H or bearer," may be interpreted, reasonably, we think, to require the endorsement of H, or of whoever presents it as the bearer thereof. If the word bearer be put in apposition with the name A, then it would read "pay to the order of A, or to the order of any bearer hereof," and the "order" requires an endorsement. Besides this, so many banks have

been caught by the surreptitious addition of the words "or bearer" to a check drawn "to the order of A." that they feel justified in asking for an indorsement, even if our interpretation of the meaning of the phrase is not accepted.

11. A orders of B a bill of goods upon B's letter of representation of a certain line of goods; the goods are shipped and B notifies A that he has drawn a sixty-day draft on him for the amount. A feeling certain that the goods sent are as represented by B's letter, accepts the draft. The goods arrive and upon inspection they are found to be inferior. Under the circumstances cannot A give B notice that the draft will not be paid at maturity for reasons assigned? By so doing will it relieve A of protest?

A. A notice to B will not prevent the protest if B chooses to protest it. Nor will it prevent the collection of the acceptance if it has passed into the hands of a third party in good faith for value. If B attempts to collect it, A can plead "no consideration"; but this will not avail as a defense to the suit of one who may have taken it from B for a valuable consideration.

12. We accepted on October 8 a draft at sixty days' sight, making it payable at our office. On December 8 we received a notice from the Blank Bank reminding us that the draft was due that day and requesting that we call and pay the same before 3 P. M. Are we obliged to send to the bank and pay the draft, and if we refuse to do so, can the draft be protested without first being presented to us at our office and payment refused?

A. When a note is made payable at a private office it must be presented there for payment before it can be protested. But it need not be presented during banking hours, "business hours" being the rule, and this phrase has no legal definition that fixes the limit of time. All the banks open and close in the city simultaneously, so banking hours are fixed by custom; but business offices have no fixed hours for opening and closing, and the notary will put off the demand frequently until a late hour in the afternoon. If the office is closed for the day it becomes a legal question whether it was kept open as long as proper business hours required, and every case has to be fought out by itself, as there is no established custom. Further than this the collector is not

required to take anything but legal tender money; and he may refuse even a certified check. Few houses keep coin or legal tender money in hand sufficient to pay a large draft.

13. In answer to ours concerning alteration of a negotiable instrument you say: "To change such place of payment or to insert a place where none was named in the first instance, constitutes a material alteration of the paper as against all parties not consenting to the change." Suppose that, as in a case before us at present, we had notified the drawer of the note a full month in advance of maturity of the change of place of payment and can prove that the notice was received by him in ample time to have objected to the change if he had so desired. Would not his tacit agreement constitute a consent to the change so made?

A. The question originally put to us by this correspondent was: Can the place of payment be changed in a negotiable note by the drawee without the knowledge of the drawer and without invalidating the note?" In reply we said that such a change would amount to a material alteration and would render the note null and void. We cannot see that the communication now sent by our correspondent puts any different face upon the matter. The first thing that was done, apparently, was to change the place of payment upon the face of the note. The moment that was done the paper became worthless. Silence of the maker thereafter, when the matter was brought to his attention, could have no effect, one way or another, on an alteration already made. There are cases in which if a person is notified beforehand that a thing is about to be done, it becomes his legal duty to object immediately or else to refrain from opposing any objection thereafter.

14. A contends that it is usual to stop payment of a check which has not reached its destination and to issue in its place another of the same date and number, marking it "duplicate." Now, supposing some scamp, knowing that a duplicate has been issued, gets hold of the original, marks it "duplicate," and collects it before the real duplicate is presented. Is such an issue customary and good usage?

A. The practice of drawing two checks precisely alike, except that one is marked "duplicate," exists, not only in the case described by our correspondent, but in many others

as well. Two checks, one a duplicate of the other and so marked, are often drawn as a regular part of the original transaction. In such a case the bank, using due care, pays the check first presented and refuses to pay the other. The same custom has long prevailed with regard to bills of exchange, which are similar to checks in many regards, and such an occurrence as our correspondent supposes has not happened frequently enough to overbalance the advantages of the system.

15. A bank presented us a draft drawn by a southern house at five days' sight, with documents attached. We declined to accept the draft on the day presented on account of a question about the goods. Two days afterward, the bank holding the draft in the meantime, we find the goods are probably all right; we then call upon the bank and offer to accept the draft. It then informed us that we cannot have the documents until the drafts are paid; we of course refused to accept the draft on such conditions. Is not the bank liable to us for any loss that we may sustain by its action?

A. It has been decided by the Supreme Court of the United States that, in the absence of instructions, the bank, in such a case, is bound to surrender the bill of lading on the acceptance of the draft attached to it. The judge stated very pointedly that it was the evident design, both in law and equity, where a time draft was drawn against a shipment of goods, that the consignee should use the goods as means to meet his acceptance, and if the bank held back the goods until the draft matured, it deprived the acceptor of the use of the goods, who would thus be obliged to let the draft go by default or raise money to meet it from other quarters. In the case cited by our correspondent if the bank received no instructions it should have taken the acceptance and given up the "documents." But if it had instructions to obtain payment before surrendering the bill, it is not liable for refusing to give it up until payment was tendered or secured.

16. A buys from B his draft on London payable on demand. The draft is returned protested for non-payment. Besides the protest charges on same, what percentage for re-exchange can A demand from B?

A. The law provides that the damages for the protest of foreign bills shall in all cases be at the rate of 10 per cent., this to include the protest fees and charges.

17. We purchased a certain grade of hay of a party in Canada; he consigned the same to the order of his bank and made a draft at fifteen days, with a bill of lading attached. This draft was presented to us for acceptance and we accepted same. Before the draft was due the hay arrived, and was not up to grade and was more or less damaged. We notified the shipper, and also the bank, that we would not accept the hay nor pay the draft. Can the bank hold us for the amount of the draft and make us pay?

A. If this draft is presented for payment by the bank, acting as agent of the seller of the goods, or by any agent of such seller, the acceptor cannot be compelled to pay it; he has a perfect defense as against the drawer or any agent of the drawer. The acceptor has given the paper a credit and currency which it might not have had, and probably would not have had, if he had refused to accept it. Having given it such currency as a valid instrument, he will not be allowed now to refuse payment upon the ground that he did not receive an adequate consideration for it. His only remedy if payment is demanded by a bona fide holder is to pay the draft and then look to the seller of the goods for his damages.

18. A foreign draft is presented on October 7 at 5 P. M. three days' sight. Is it customary to accept drafts after banking hours (3 P. M.), and if not should it not be again presented on the following day?

A. When a draft is presented to a banking house for acceptance, presentment should be made during banking hours. As to presentment in other cases, however, the law provides simply that "presentment for acceptance must be made * * * at a reasonable hour on a business day." The statute does not say what is to be considered a reasonable hour. In any case of dispute this would be a matter to be settled by the testimony of those acquainted with business usage as to the time of opening and closing. The question cannot arise, however, if the drawee or anyone authorized

to speak for him is found when the paper is presented. Presentment at any hour is reasonable if the drawee or his agent is found at the place of presentment. Demand for acceptance can then be made and some answer must be given. The drawee may ask for 24 hours in which to reach a final decision, if he is not ready to give one then, or he may accept the draft at once, or he may refuse either to accept it or to consider the matter further. Whatever his decision may be a valid presentment for acceptance has been made.

19. We sell goods to A, who instructs us to draw at three months on his bankers B for the amount of his purchase, the bill of lading to be delivered to B against an acceptance of the draft. The bankers B accept the draft, but before the three months have elapsed A fails. Are we liable to the bankers for the amount of our draft on them?

A. The acceptance of a bill of exchange by the person upon whom it is drawn has practically the same effect in law as the certification of a check by the bank upon which it is drawn; in fact, checks and bills of exchange have very much in common, the main difference between them being that a check is drawn only against a bank, while a bill of exchange may be drawn against a bank or any other corporation, or against a firm or an individual. In the case of either a check or a bill the drawee is not originally a party to it. But as soon as presentation for acceptance has been made, and the bill has been accepted, or the check certified, the drawee becomes the principal debtor. Acceptance need not be absolute and unconditional; it may be accompanied by any condition the acceptor chooses to make in writing upon the bill and the holder is willing to accept. The drawer is not liable.

20. You stated in a recent issue that a bank has a right to charge a customer's note against his deposit without any express authority from him to do so, and that you can quote authority for it. Please do so.

A. Our correspondent is altogether mistaken. We have never said that a bank has a right to charge a note to a customer's account without his authority. But what we said was that where a note is made payable at a bank, that is sufficient authority; and the bank not only may pay it, but

must pay it if the account is good, and charge it to such account. Morse on Banking, says: "Bankers refusing to pay such an instrument when presented are liable to be sued by their customers," and again "the like authority would also be given to pay a promissory note which the customer had made payable at his banker's. The duty of the bank to make such payments and the reciprocal right of the depositor to have them made, arose from the contract to that effect, which, though probably never definitely expressed, will always be considered to be implied from the usual course of the banking business."

The case submitted to us for the reply to which our correspondent takes exception was this: The customer made a negotiable note for $1,000, payable at his bank. The bank discounted the note and held it until the day it was due, when it charged the money to the customer's account. On the same day the customer gave his check to Smith for $1,000, which was presented the next day and payment refused, the customer having no funds. Smith contended that as the customer, who that day became a bankrupt, had not given the bank any special order to cash that note, it ought not to have charged it against the deposit, and therefore the money belonged to him to satisfy his check. The truth is that if the note had not been due that day, the bank as its owner could hold the money on deposit in its hands to meet it, the depositor being a bankrupt, and might have lawfully refused to cash the check.

21. A received a thirty-day draft and presents it to B for acceptance. Said draft falls due on Sunday, but B accepted it, making it payable on Monday. A thinks that B ought to make same payable the very day it falls due, Sunday or no Sunday, even if the amount could not be collected until Monday. Who is right?

A. It was the right of the holder of the draft in this case to require of B an absolute and unconditional acceptance, leaving the time of payment to be settled by the tenor of the paper as interpreted by the law. There is a reasonable doubt whether the acceptance here described was valid. There is one decision, in an old Louisiana case, holding that

a bill payable 60 days after sight was properly accepted, the acceptance being made payable on a specified day, which was, in fact, 63 days from the date of acceptance and the day on which the paper would have been payable, if accepted generally. On the other hand, there are well considered cases holding that it is not proper to make the acceptance payable in a specified kind of currency, though it was such money as the acceptor might properly tender in payment of the draft.

22. Does an acceptance dated in a certain place, accepted and payable in same place, with the words "With exchange" printed on same, carry exchange?

A. The words "With exchange" in printed form were probably designed for a draft payable in some other place than the one in which it is dated, or else to be filled up to read "With exchange on New York," or "With exchange on London." Probably the words mean nothing in this case.

23. Is it customary in sending orders or remittances to Europe to send original per a certain steamer and duplicate per another, or only original?

A. The custom varies in regard to following orders and bills with duplicates. In days when communication with Europe was irregular and the time of receipt uncertain, such duplications were very common. But it is not often done in these days when an order goes to London with almost if not quite as much regularity as to Boston.

24. A bill of exchange drawn by A on B, indorsed by C, is protested for non-acceptance. D thereupon accepts same in honor of indorser C. Can D, upon maturity of that draft, require from the holder, as a condition precedent to the payment thereof, a protest for non-payment by the drawee B?

A. In order to recover the person who pays a bill supra protest or for honor must prove presentment to the drawee, non-payment by him, and notice to the drawer. It is held by the courts that a holder cannot recover against an acceptor for honor by proof of less than would enable the latter to recover against the person for whom he accepts. In other words, an acceptance for honor is construed to be, not an

absolute, but a conditional acceptance. It is held to import an obligation on the part of the acceptor that if the bill is not paid by the drawee upon due presentment at its maturity, and if it is then protested for non-payment and due notice of this fact given to the acceptor for honor, he will pay the bill. Such presentment, protest and notice are held necessary to make the liability of such an acceptor absolute.

25. A draft drawn at ten days' date and stamped across the face "hold for arrival of goods," sent to a bank for collection with no other instructions—in your opinion what would be the course to pursue; should the bank hold the draft for arrival of goods or return at maturity?

A. The proper thing to do is to obey instructions and "hold for arrival of the goods" against which it is drawn, no matter how long the period.

26. Please state whether the acceptance of a draft makes the party who accepts it responsible for its payment at maturity.

A. If the acceptance means anything at all it must mean that the drawee undertakes the payment in fulfillment of its terms and conditions.

27. A in a foreign country draws upon B in New York a bill of exchange at ninety days' sight in usual triplicate form of first, second and third, the *first* of which B accepts. Being pressed for funds B accepts later the *second* of this same bill, which is sold in the market for his accommodation to C, who buys it in good faith and in ignorance of its character. In the event of the failure of B and the inability of the indorser to meet the bills, can A be held on both the acceptances?

A. How can the acceptor of the first of a series of three bills come into possession of the second under any circumstances? A draws the bills and hands them to some one (say X) who is to collect or to receive the money. Of course X sends forward the first for acceptance and holds the other two of the set. B, on whom they are drawn, having accepted one of the set, cannot get possession of either of the others unless he steals it, or there is collusion between the proper holder and himself with a view to fraud.

In any event, the drawer can only be held for the payment of that one of the set which was first presented.

28. A German bank sends us a draft of $1,000, payable sixty days after date, on New York, for collection. The drawee refuses to accept; he says the amount is not right. May we return the draft at once, or are we bound to keep it until due, and then present it again for payment?

A. The draft should be protested for non-acceptance and may be returned at once to the sender on the other side.

29. If an exact copy of the inclosed check be presented to the bank on which it is drawn on December 12 would it be proper for the bank to protest it in order to bind the indorsers? The check, you will notice, falls due on December 10 and the drawer that day had sufficient funds in bank to pay it, but did not have on the day when it was presented.

A. The instrument inclosed, and which the correspondent calls a "check," is a draft on the National Bank of Bristol, dated, "Bristol, Tenn., November 20," and reading: "The National Bank of Bristol, fifteen days after date, pay to William Blank or — — one hundred dollars, John Blank." It is indorsed: "William Blank, John Smith," and also by the cashier of a bank in which it was deposited for discount or collection. If it was a check it would be due without grace. The document seems to have been a bill of exchange due December 10. Payment was not demanded till December 12; therefore the indorsers were released and there was no object in protesting it.

30. In order to settle a dispute we beg you to give your decision on the following: 1st. A house in this city accepts a draft, the amount of which is to be covered by consignment of goods or remittance from the drawer. The drawer fails to remit in due time and the draft is not paid upon maturity. Can it be protested for non-payment, and is there any law or usage compelling the acceptor to pay the draft when it falls due?

A. If the acceptance is in the hands of the drawer, who has failed to give any consideration for it, the drawee may refuse to cash it without any legal liability or serious loss of credit. But in almost every case the drawer has obtained money upon the draft and it is in the hands of a third party

for value. In this case the failure of the consideration is no excuse for non-payment, and the reflection upon the credit of the acceptor who has refused to make good his promise is precisely the same as if he let one of his own notes go to protest. The holder can collect it by law with the ordinary damages and expense of protest.

31. A merchant established in a foreign country remits money to a firm in New York city, on which he is allowed interest at the rate of 6 per cent per annum. After some time he draws for part of the amount at three days' sight. Is the New York firm bound to accept such drafts? or can they demand that the foreign merchant draw only at a longer term?

A. The lender has the legal right to demand payment at sight. Of course it would be courteous to give some notice of the purpose to withdraw the deposit; but if the amount was not large, the draft in question giving him a week's warning, would seem to answer the condition. The New York house cannot "demand" any time upon the draft, as the money is due on call.

32. A party telegraphed Bank State of New York: "John Smith's draft on us for one hundred dollars will be paid on sight. M. N."

A draft signed "John Smith" is duly presented through a bank in this city and paid by M. N. About two months after this draft has been paid by M. N. they are informed that it is a forgery and was not drawn by John Smith but by an agent of his and signed simply John Smith. The agent being irresponsible, who is to lose, the draft being a forgery?

A. The drawee is bound to know the signature of the drawer, and as between M. N. and all other innocent persons having to do with the draft he must be the loser.

33. A firm sends their banking correspondent a demand draft on B for collection, with no special instructions about protesting for non-payment. The bank presents this paper to B, who claims to have already remitted. Should the bank protest this draft?

A. If there is no indorsement on the draft there is no occasion to protest and the bank incurs no responsibility in returning it without protest. But if it has an indorser to

be held it should be protested as otherwise the bank is liable for any accruing damage to the owner.

34. If a draft reading "Please pay to the order of," is presented on a Saturday forenoon, must I give the cash at once, or can I demand privilege of paying it on Monday?

A. If the draft is payable at sight or on demand, it may be presented on Saturday before 12 o'clock, and if not paid may then be protested.

35. Please inform me what risk a person runs in indorsing a draft made payable to another firm, if the party to whom it is made payable neglects to indorse it over to us, the same being in settlement of our account.

A. If the draft is payable to John Jones & Co., and the money is coming to Smith & Brown, and it lacks the indorsement of the former, the latter may sign "John Jones & Co., per Smith & Brown," and if the drawee will pay on that indorsement no harm is done. But for any one not authorized to sign the name of John Jones & Co. to write that name as if it were the act of the firm itself, would be forgery, punishable by fine and imprisonment.

36. A draws a draft on B for 30 days, payable at a certain bank. If the draft is presented to B and not accepted on presentation will it not be protested? Has the bank anything to do with the draft until after acceptance?

A. The drawer of a draft cannot make it payable anywhere. It is the drawee or acceptor who makes it payable. If the drawer has expressed in the order the place where it is to be payable, then by accepting it the drawee also accepts that condition and binds himself to pay it at that place, but until its acceptance that expression is of no account.

ELECTIONS.

1. To settle an argument will you please inform me how long it is necessary for an American citizen to reside in either New York or New Jersey before he is legally entitled to a vote for President of the United States. Are there different laws in this respect for separate States in the Union? Are traveling men entitled on account of their vocation to any greater privilege than a permanent resident?

A. An American citizen must live one year in New York or New Jersey before he can exercise the elective franchise. In some States a shorter residence, varying four months to one year, gives the privilege. A man who travels, but who has a permanent home which he occasionally visits, does not lose his residence, although he may be away ten or eleven months in the year, but he cannot vote in any other place.

2. A man voted in Newark, N. J., last Presidential election, moved up to Troy, N. Y., March 5, staid in Troy eleven months and came to New York city, intending to proceed on a traveling tour, but something prevented his proceeding and he was detained in New York city five weeks, his wife remaining in Troy. He then sent for his wife and both continued on his interrupted tour through New England. He came back to New York city and resided therein nine weeks, then traveled again, and came to New York city about seven weeks ago. At the time of leaving Newark he intended to make New York city his home; had all letters addressed to him at New York city and registered when out of town as from New York city. His business is that of a traveling and commission salesman. When stopping in this city he has always lived in furnished rooms, also the nine weeks and seven weeks he lived in the same Assembly District. Is he a legal voter?

A. If our correspondent when he left the city each time took his belongings with him, and left nothing to identify his place of residence here, we do not see how he can be called a legal resident for the last year to entitle him to vote.

EMPLOYER AND EMPLOYE.

1. A sells through B, his agent in Europe, to whom he pays commission and cable expenses on all transactions wound up in order, 200 pieces of goods on sample to C, to be shipped and paid for in lots of fifty pieces each; 100 pieces went forward and drafts against them were accepted by C on the strength of other samples taken from the goods themselves, according to custom. The remaining two lots were also shipped, but acceptance of drafts was refused, C claiming a difference in quality on receipt of samples, and so informed B, who, instead of at once notifying A, as was plainly his duty, left him in ignorance of the plans of C. Can A refuse B the commission?

A. A can refuse all further compensation to B, and if the latter sues for any part of his commission can claim offset

in damages he has suffered through B's neglect. The latter being established by sufficient evidence, B would not recover.

2. 1. A and B are employed by C. A, handling C's money, gave B a certain amount to make a purchase; through carelessness B loses part of the money. A did not know the value of the article and gave B twice as much as he needed. Can C hold A responsible for B's carelessness?

2. A is employed by C on the 23d of August and it is stipulated that A is to receive a monthly salary, payable on the 23d of each month; it was further agreed that A was to labor days, nights, Sundays, etc. A is sick for five days, the last three days of one month and the first two days of ensuing month. A returned to business on the 26th and was handed his salary on the 27th at midnight. A refuses to accept his salary. C holds A responsible for B's carelessness and will only pay him his wages less the amount of B's loss. A resigns his position on the night of the 27th. C agrees to A's going. C is pressed by A for his full month's salary and four days' pay of another month, notwithstanding the fact of his being absent five days through sickness. C refuses to pay A a full month's wages or for any day of another month. Has A any redress?

A. 1. If one employe loses money belonging to his employer another employe cannot be held liable for the loss upon the ground that, having control of the money, he entrusted to the employe who lost it more money than was needed for the purchase the latter had to make.

2. An employe cannot claim pay for any time during which he is kept away from his duty by sickness unless it is customary in the trade to pay for such time. All contracts are made subject to the customs and usages of the trades to which they relate, except in so far as they contain express provisions inconsistent with these. If an employe is engaged by the month and his duties are general, if he is kept away by sickness for only a small part of a month and no one else is employed to do his work, and if he himself does extra work when other employes are away, it is a very general custom not to deduct anything from his wages, by reason of his short absence.

3. In reply to an inquiry in your issue of June 29, you state a case where a party having teaming done by contract and having

charge of the wagons and also having his name on the same is not responsible for damages in case of an injury to the general public. Having had occasion to look up matters of this kind I believe you will be interested in a recent decision which states distinctly that a party having teaming done by contract and having control of the operation of the vehicles is liable under the rule of Master and Servant. I refer you to Baldwin vs. Abraham—Appellate Division, Supreme Court No. 57, page 67, which was affirmed in 171 New York, 677. I also refer you to 171 New York, 507, Howard vs. Ludwig, in which the question was who would be the master of the driver and liable for the injury, all depending on the nature of the contract. If you find that these later cases reverse your previous judgment will you kindly publish the fact?

A. The two decisions which our correspondent cites we had examined with some care before answering the former inquiry; they are not in point. The question of June 29, had reference to a case in which a merchant had employed a truckowner to use his truck in hauling the merchant's goods; the driver, who was also owner of the truck, caused an injury by his negligence, and our conclusion was that the merchant whose goods he was hauling was not legally responsible. In both of the cases cited by our correspondent, the teams and wagons belonged to one individual or corporation, they were engaged in hauling the goods of the defendants and the drivers were hired for the purpose. There was no ground upon which to hold that these drivers were engaged in an independent occupation, and the only question was whether they were to be regarded as in the employ of the owners of the vehicles or of the merchant whose goods were being hauled. The jury heard all the evidence and concluded that the owner of the goods was the real employer, and the appellate courts refused to disturb this finding.

4. An eight-hour law provides that: "Eight hours shall constitute a legal day's work for all classes of employes, except those engaged in farm and domestic service, unless otherwise provided by law." The language is very plain. Many merchants believe that this bill puts them in the position of having to make special agreements with their help; that if they do not do so the help can sue for salary for any time they have to work over eight hours. How is it?

A. The statute to which our correspondent refers will not interfere with the utmost freedom of contract between the ordinary non-official employer and his employes. In certain special cases, where the health or safety of the community is involved, the Legislature has power to interfere between employer and employe; but such cases are comparatively rare. The statute in question is a re-enactment of a law which has been in force for nearly ten years, and under which no attempt has been made to fix the number of hours out of twenty-four during which an employe may have the liberty of working.

5. 1. I am under contract with a firm of insurance brokers for three years at a stipulated salary and an additional allowance for expenses to act in the capacity of manager for their insurance department. Under the above agreement am I entitled to receive or draw commissions on my personal insurance risks which I place with them and solicit after business hours or receive from relatives or friends?

2. Also, am I permitted to effect this insurance with other offices without giving my employers notice thereof and draw commissions thereon for my own personal use?

3. Also, is the business I place with my firm my property or theirs? There is no stipulation in my agreement with reference to my personal risks that I control. Can I also dispose of this business?

A. 1. An agent or employe of any kind, who has an express agreement with his principal or employer, is never entitled to any extra compensation under an implied agreement. Whatever he may do for his employer is held to be fully paid for under the agreement. If he performs any extra service he must first have a distinct agreement as to extra compensation or he cannot collect any extra compensation through the courts.

2. One of the first and most imperative duties of an agent, as the courts hold, is to be entirely loyal to his principal. If he is at the head of a department, as in this case, it is his duty to bring as much business as possible to that department; he is not at liberty to carry any business to a rival of his principal, whether he does so during business hours or not, which could have been secured for his principal.

3. An agent or employe is entitled to nothing out of the

employment except his commissions, or salary, or wages. The business, and all that is to be gained from it in the future, is the property of the employer, unless the contract expressly provides otherwise.

6. If a plumber is engaged to do certain work on board of a private yacht for a price agreed upon and by his carelessness damages certain parts of the boat can he be made to pay for the damage? Can the owner of the yacht hold back payment of the fixed sum as part compensation for damages done?

A. A plumber or other person hired to do work upon a yacht is no more justified in causing unnecessary damage to the property than a person not employed in its repair. For any damage that arises necessarily out of the work he is, of course, not liable, but if the damage is attributable to his negligence, lack of skill or willful misconduct the amount may be recovered from him. The owner of the yacht may hold back from the wages due to the workingman the amount at which he estimates the damage caused by the workman's carelessness. The latter will have no recourse in that case except to sue for the amount which he claims to be due him as wages. Against this claim the employer may set off the damage done to his property and evidence then be submitted upon both sides to show whether the employer's estimate of the amount of damage is correct, and what the real amount is.

7. I informed an architect that I wanted to build a stable for about $1,500 to $1,800, and in order to give him an idea what I wanted I showed him a stable of one of my neighbors, for which he gave me an estimate amounting to $1,800. He made a sketch and got an estimate for the same of $3,000. I requested him to furnish plans and specifications for a stable at this price. On these plans and specifications I received estimates from five different builders, who differ from $4,700 to $5,600. As it was not my intention to spend so much money, I asked plans and specifications from another architect, who undertook the contract for $2,000. Now the former architect sends me a bill for his work of $100. As described above, it was his own fault that I could not accept his plans. Is he entitled to remuneration?

A. If an architect is employed to make plans for a build-

ing of a certain kind, he is not entitled to pay if the plans he presents are for a building of a very different kind. If he is asked to prepare plans for a building to cost no more than a certain amount, or if his plans are accepted only on condition that a building can be erected in accordance with them for a given amount, the architect cannot recover unless the building can be erected for about the sum so named. Here as elsewhere the law will not take account of very slight and unimportant variations, but an architect who is employed to prepare plans for a $3,000 stable is evidently not doing work of any value to his employer when he makes plans for a building to cost nearly twice as much.

8. A sends a claim for collection to B, an attorney. B sends the claim to another attorney, C, who makes the collection but will not turn over the money. Has A any redress, and on whom?

A. If A sends a claim for collection to B, and B forwards it to C, who makes the collection and refuses to turn over the money, the owner of the account may sue the person who actually collected it if he chooses to do so. All courts are agreed on this point. In some States this is held to be his only remedy. In other States, including New York, it is held that the person to whom the account was given in the first place, B in this case, may also be looked to to make the amount good.

9. A employs B at a stipulated yearly salary, payable in equal quarterly instalments, agreeing to give him a full quarter's notice of any intention to dispense with his services. After the arrangement has continued for about two years, A sells out the business to a corporation, which declines to continue B in its employ. No notice at all was given to B until he was told that his services were no longer needed. A declines to pay him except for the time he has actually been employed, saying it is always understood that one who is not engaged in business needs no employes, and that the sale of his whole interest in the concern necessarily put an end to all contracts of employment. B thinks that he is entitled to something beyond the mere salary accruing while he continued in A's employ. Which is right?

A. If A employs B, agreeing to give him three months' notice of a desire to terminate the hiring and then discharges him without such notice upon the ground that he is going out

of business, B is entitled to recover such damages as the breach of contract may have caused him. A may go out of business whenever he chooses to do so, but he must not make another suffer as a result of it, and he cannot use that fact as a means of escaping any obligation he may previously have taken upon himself, whether towards an employe or any other person. B's damages are not necessarily the equivalent of three months' salary, and they may not amount to anything. It is his duty to seek other employment in a similar line of work and to accept a situation at the best salary he can command, if one is open to him. His loss then at the end of the three months will be the amount less, if any, that which he has actually earned during that time.

10. An architect prepares a plan for a certain building and guarantees that the building can be erected for $21,500 with said plan. On this guaranty it is agreed to pay him $200 to prepare working plan and specifications of the same to be deducted from his fee as architect should the building be erected. Upon opening the bids it was found that the lowest was for $39,000, or $17,500 more than the guaranteed figure of the architect, and all bids were rejected. Is the architect entitled to the $200 either morally or legally?

A. Where an architect's plans are at first accepted, but afterward rejected because the work cannot be done for the amount of his estimate, some courts hold that it is a question for the jury whether it was a condition of the contract, either express or implied, that the estimates should be reasonably near the cost. In some cases the courts have gone further than this, and have held that a person bargaining for the services of an architect engages his skill and judgment as well as his labor, that therefore if an architect makes estimates which turn out to be incorrect to a considerable extent, and consequently of no use, this is evidence of such negligence in the performance of his work as will defeat his efforts to recover.

11. A salesman has been in our employ the past year on commission. It has been our custom to pay commissions also on mail orders from his particular customers; however, without any formal agreement to that effect. Foreseeing a condition arising that would make it advisable to protect our own interest by withdrawing the mail order

feature, we notified him under December date that hereafter no commissions would be paid him except on orders actually taken by himself or bearing his own signature. Two months previous to the giving of this notice he sold a line of samples, to a certain jobbing concern, expecting to receive commissions on their subsequent orders during the season. Some orders were received after the above notice was given. Are we under obligations to pay commissions on them?

A. An employer is bound to pay his employe only so much as the contract calls for. If for any length of time for any reason, the employer has been giving the employe a gratuity, in addition to his earnings under the contract, this may be stopped at any moment, without previous notice. It is like any other gift or gratuity that a person may have been long in the habit of giving a person at stated intervals. If he decides to cease giving, he has only to wait for one of the regular donation days and then simply decline to give; of course it would be more satisfactory if he were to give due notice of his intention, but he is not bound to do so. In this case, however, notice has been given, and the employer is no longer bound to pay anything more than he has agreed to pay.

12. A person employed some workmen to move a frame house from one place to another. In passing through an alley upon which I have some property they have injured the eaves of the roofs of some buildings belonging to me, also torn the fences in places. I apply to the owner of the house, who tells me he will not pay any damages, and refers me to the workmen for redress. Where am I to look for damages?

A. It is a well settled principle of law that a master is responsible in damages for the torts of his servants while engaged in the performance of their duty. The most serious difficulty which ever arises is that of determining who is the responsible master in any given case. In the case put by our correspondent, for example, if the owner of the house had engaged one whose business was house-moving, to come with his assistants and do the work, it might be a question whether the owner of the house or the person immediately employed by him was responsible. In this case, however, there appears not to have been any standing between the working-

men and the owner of the building, and there ought to be no difficulty in holding the latter responsible.

13. In what shape must an order be when taken by a salesman, so as to be binding upon the employer to deliver the goods?

A. One who employs a salesman is morally bound by all the contracts in their name which he makes in the line of his business, and within the scope of his apparent authority; but verbal bargains for an amount exceeding fifty dollars are not legally binding in many States, unless there has been partial delivery or partial payment.

14. What are the days in a year that a man working by the month can not be compelled to work? Can a hired man make his employer pay him for extra time, that is working before 7 A. M. and after 6 P. M.?

A. There is no legal rule on the subject applicable to every calling. Ordinarily, Sundays are excepted from working days, but on a farm a large amount of work must be done by the hands on Sunday, as the cattle must be fed and watered, cows must be milked and other service rendered. In livery stables, especially where funerals are attended, Sunday is often the busiest day of the week. In ordinary mechanical labor hands by the month were not required to work Sunday and the legal holidays until the Saturday law was passed, when in many establishments the employes were given the chance to work at full wages or take the time off at a reduction. A hired man cannot collect for overtime unless hired for specific hours, and compelled to give a longer service.

15. Supposing a firm in France or England engages an American to represent them on commission to travel in the United States and said salesman does not sell goods enough in the year to cover his commissions and is discharged by the said firm and when discharged is in their debt say $500, can that firm imprison him for debt should the salesman visit France or England?

A. There is no imprisonment in either England or France for a failure to pay a simple contract debt. But if a judgment for the debt has been rendered by any court of

competent jurisdiction, the debtor may be imprisoned in either country upon the proof of the fact that he has, or has had since the rendition of the judgment, means of satisfying it, but has failed to do so. Of course, if there is any fraud in the transaction, the fraudulent debtor may be imprisoned.

16. 1. A sends furniture, etc., to B's store to be renovated; while there a fire breaks out in B's premises and the furniture, etc., is destroyed. Is B responsible to A for the furniture while in his care, or does the loss fall on A?

2. C sends a machine to D for repairs, which are to cost $250, of which D receives $200 in advance while repairs are being made. Before the work is all done fire destroys the building in which D's shop is and the machine is a total loss. Can C claim refund of the money advanced to D for work done on the machine?

A. 1. A person having in charge the property of another for the purpose of doing work upon it is responsible only for ordinary care in defending it against damage from fire. In the case put by our correspondent, D is not responsible for the loss of the furniture, unless the fire occurred through his gross negligence.

2. The common law rule, which we believe is not changed by statute in any State, is that one who has done work for another upon a piece of property which is destroyed before the work is completed, and through no fault on the part of the workman, is entitled to compensation for the amount of labor he had done before the destruction of the property. D is entitled, therefore, to retain so much of the $200 as his work had earned up to the time of the fire.

17. A works B's farm on shares. A hires a man by the month, sells his share of the crops and does not pay his help. Can help collect his pay of B?

A. The help has no claim on B for his pay.

18. Supposing a man while traveling for his employers, say from New York to Chicago, should obtain through his own influence a pass for part of the distance. On his return the firm ask him for expense account, they having provided him with funds to travel with. He charges among other items fare from New York to Chicago. Is such a charge lawful?

A. An agent is in all cases legally bound to make as good a bargain as possible for his principal, and to allow the latter to reap the full benefit of it. He is entitled to reimbursement for all expenses incurred for the principal's benefit, but to nothing more. The employer being bound to pay the expenses, whether they are great or small, provided they were actually incurred in an honest endeavor to further his interests, is equally entitled to any advantage arising from decreased expenditure. It has been held in many cases, that an agent will not be allowed to make a profit for himself out of the business of his agency, over and above such reasonable compensation as by law or agreement he may be entitled to.

19. Is a person who employs a janitor to commence work from a certain date, say about ten days ahead, and then from the fact that his old janitor decides to remain, gives the new man, say one week's notice that owing to such circumstance he will not need his services, in no way bound to employ this man or liable to him for payment of his services?

A. A valid contract of employment is like any other contract in this respect, that either party to it has a right to insist that the other shall abide by his agreement or pay damages for his failure to do so. We are not informed as to the terms of the contract in this case. If the new janitor was employed for a year, and the contract was not evidenced by any writing, then it was void from the beginning and neither party has any rights under it. If the agreement was that the janitor should keep the place only so long as he was satisfied with it and the employer was satisfied with him, this was a hiring at will and either the employer or employe was entitled to put an end to it at any time, without the consent of the other. If it was an agreement for a month, or a quarter, or any other definite period the employer had no right to put an end to it without fault on the part of the employe, until such definite period had expired. A contract with a janitor stands upon the same legal footing as a contract with a school teacher or an opera

singer, or any other person employed to perform personal services.

20. A business firm or business corporation requiring the services of private police officers for patrol or watchman's duty day and night, secure the services of a deputy or special deputy sheriff, with whom such firm or corporation enter into a contract to furnish them for a stated weekly, monthly or yearly sum, the private police service which the nature or location of their business may require and place such contractor at the head and in command of such men as he may select and hire in his name for the purpose stated. The question now turns up whether a person receiving any moral or bodily injury at the hands of the special officers in the employ of such contractor can sue the firm or corporation that hired him for damages for insults, ill treatment, battery or bodily injury, be it either for cause of disorderly conduct on the part of the complainant, or for a mistake in the person on the part of the private officer, and ignoring in a suit the contractor, if he is known to have nothing.

A. The fact that the contractor in this case is a deputy sheriff or special deputy sheriff is of no importance as he is acting outside of the duties of such office. The general rule is that the principal is civilly liable for injury done by the agent while acting within the scope of his duty, and the only question in this case is whether the owner of the property or the deputy sheriff is the principal. The courts have almost uniformly held that where an owner contracts to have something done to his property, which is not itself illegal or necessarily dangerous to third persons, he is not liable for dangers arising from the negligence of the contractors or their employes in doing the work, if they are not his servants or under his control as to the manner of performing the contract, but are independent contractors.

21. I have made a written agreement with one of my employes whereby I agreed to employ him for three years at a certain annual salary, payable in equal monthly payments. This party on account of illness was unable to attend to his duties for which he was engaged and was absent three months. There is no sick clause in the agreement and I would like to know whether I am compelled to pay him his salary for the term he was absent.

A. The employe by not rendering his services for the period of three months committed a breach of the contract.

A breach of contract of this nature, caused by illness, is sometimes called an involuntary breach. The general rule in such cases is that the employe may recover wages for services actually rendered and cannot be held to answer in damages for his breach. The employe cannot, however, recover for services which he has not performed. In fact, if through an involuntary breach of this kind an employe is absent from his work for any considerable length of time, it might operate, at the election of the employer, as a discharge of the contract.

22. A salesman is engaged to go on the road for one year on a stipulated salary, but fails to earn his expenses and salary, which together amount to almost double of those of his colleagues. He does not show any visible effort to improve these conditions, and pleads that he does his best; is there no redress for the firm, or are they bound to pay him to the end of the term?

A. There is no avoiding the employment of the unprofitable salesman except with his consent. The firm is bound for the year if the traveler did not earn a dollar, provided he continues his avocation in apparent good faith.

23. In what respect does the Employers' Liability for Personal Injuries Law affect the common law on the subject?

A. A statute has made some important changes in the rules governing an employer's liability for injuries to an employe as those rules were established by the common law. The most important changes are these: The employer now becomes liable for any injury caused to an employe by reason of any defect in the machinery "which arose from or had not been discovered or remedied owing to the negligence of the employer or any person in the service of the employer and entrusted by him with the duty of seeing that the ways, works or machinery were in proper condition." This provision alone changes the common law in a variety of ways. It makes the employer liable, in this special respect, for the negligence of some of his employes, as he was not at common law, and it also makes him liable for defects in machinery of which he had no knowledge, which is not the common

law rule. At common law each employe took upon himself all risks arising from the negligence of other employes, in most cases; the statute changes that rule, to some extent, by placing the liability upon the employer in every case in which the injury arose out of the "negligence of any person in the service of the employer intrusted with and exercising superintendence" over the work. At common law the employe was held to have consented to all the ordinary risks of the occupation. The statute declares that he shall be presumed to assent "to necessary risks and no other," and then it defines necessary risks as "those inherent in the nature of the business after the employer has exercised due care in providing for the safety of his employes," has complied with all statutes affecting the business, &c.

24. A requested B, whom he had known for years as a buyer of merchandise for others, to attend an auction sale and buy certain goods for him. B did so, but made no agreement with A regarding remuneration for doing so. Some time after the goods were bought B sent A a bill for 3 per cent commission on $1,789, this being the face amount of the bill he bought for A. A refuses to pay same, claiming that as he did not have an agreement before the goods were bought to pay B for his services B was not entitled to remuneration for them. Please express your opinion whether or not B is entitled to his commission.

A. The question raised by our correspondent is of very frequent occurrence and has been decided more than once, probably, in every State. What the courts always hold is this: If one whose regular business it is to serve others in a certain capacity is called upon to serve a given person in that capacity the law raises an implied agreement on the part of the latter to pay a reasonable sum for such services; and a reasonable sum is that which is ordinarily demanded at the same place for the like services when there is a definite agreement. It hardly ever happens, to take a familiar instance, that a patient has any definite agreement with his doctor as to remuneration.

25. We hire a number of men, each one separately, by the week, at a certain amount of wages per day. It is our rule to make up the pay-roll and pay every Saturday. Now it happens frequently that

one or more of the men quit work before the end of the week or in the middle of the day and demand their pay then and there. To avoid greater trouble we have acceded to these requests so far, greatly to the disturbance of the routine of the business. Are we obliged to pay these men whenever it suits them to leave us, or may we put off payment till pay day?

A. The terms upon which a laborer works and the dates upon which his wages are due are to be determined by the contract into which he has entered. If this calls for payment at the end of the week the laborer cannot, by any act of his own, become entitled to payment at an earlier date. If he is discharged without cause before the expiration of the term for which he was hired, a cause of action accrues to him immediately; but he cannot refuse to carry out his contract, and thereby entitle himself to an earlier payment than he might have claimed if he had been faithful to his agreement. In the case put by our correspondent the contract is for a week. In the absence of any specific agreement on the subject the presumption is that wages are due at the end of the week; this presumption is strengthened by the fact that such payment is customary and is acquiesced in by the laborer, and it is not rebutted by the fact that the rate of compensation is a certain amount per day.

26. A owns a horse and express wagon and is doing the express work for B, for some time. A is getting a new express wagon and concluded to have B's firm's name painted on it, as an advertisement for B. C thinks that B can be held responsible through this for any accident which may happen through A's express on account of B's firm's name being on the wagon. Is C right?

A. When one brings a suit for damages against any other than the person who directly caused the injury, he must show, first, that the person causing the injury was, as a matter of fact and of law, a servant of the defendant; and secondly, that the master had given authority, either express or implied, to do the act which resulted in the damage. In other words, that the act was done in the execution of the master's business and while the servant was acting within the scope of his employment.

27. A drummer representing a house, sold me a bill of goods last fall with the understanding that I could return whatever quantity I should choose after the holidays (January 1, or thereabouts). The bill coming direct from the house which the drummer represented, was charged up and not marked "on memo." On referring this to the drummer with whom I solely transacted the business, he marked the bill "on memo," assuring me that this was just as good as if done by the house itself. After January 1 I returned part of the goods and gave check for the balance. The firm received the goods and kept same, but returned my check, saying that they didn't know that the goods were "on memo.," and will hold me responsible for the whole amount of the bill. How must I settle?

A. In the absence of notice to the contrary, an agent, such as a drummer, is supposed to have the power and authority usually possessed by agents of the same class in the same line of business. If the contract entered into between our correspondent and the agent was such as drummers in that line of business are usually empowered by their principals to make, this contract will be binding upon the firm, unless the buyer had knowledge of the fact that this particular agent was not in possession of the powers usually granted to such agents. On the contrary, if the contract was such as drummers for this line of goods are usually not allowed to make, the burden will be upon our correspondent to prove that unusual powers had been granted to this agent by his principals.

ESTATES.

1. By a will probated in New Jersey A inherits all the real estate of the deceased, and A and B inherit the personal property, share and share alike. It is further provided that all debts shall be paid as soon as possible. Are all these debts to be paid from the personal property, or should the real estate stand its proportionate share?

A. Unless a will directs that the debts of the deceased, or some part of them, are to be paid out of real estate, the personal property will first be exhausted in the payment of debts, and real property will be sold for this purpose only when there are debts yet unpaid after all the personal estate has been devoted to the purpose. This is the rule in New Jersey, as in most, if not all, of the other States.

2. A sum of money is left by will to be divided among six heirs. One of these heirs has not been seen or heard from for over sixteen years. I understand that the part of this missing heir goes to the estate. Can this be used in making repairs on the estate, or could it be used in paying the taxes on said estate?

A. Among the first duties of those having charge of an estate are the payment of taxes and the making of such repairs as will keep the property from deteriorating. For these purposes they may use any money in their hands belonging to the estate, whether it was originally left to an heir who is presumed to be dead by reason of his long absence, or whether it became the property of the estate in any other way.

3. It has been the rule in this country that the physician's bill has no priority of claim in the settlement of the estate of a deceased person, and two lawyers to whom I have shown the inclosed slip are each unable to verify your statement. Will you be kind enough to quote the act or decision on which your article is based?

A. Our opinion was taken almost verbatim from the "Executors', Administrators' and Guardians' Manual," by Joseph D. Fay. Mr. Fay informs us that he adopted it without question from an older work, which had long been considered a standard on the subject, but he adds that his attention has since been called to a decision which has created in his mind some little doubt as to the soundness of his position. The words of the decision are: "The husband was bound to provide his wife with whatever became necessary for her and was suitable for her station and his condition in life. And the charges for these medical services were clearly within this principle." Mr. Fish, in a note in his edition of "Williams's Executors" (third Am. ed., vol. 2, p. 893), says that "expenses of the last sickness and funeral and probate charges have everywhere the preference," but he cites no cases. In most of the States the question is set at rest by a statutory provision that expenses of the last sickness shall be included among preferred debts. We see no reason to question the correctness of the authorities we have quoted that the physician's bill for attendance during

the fatal sickness is properly included with the funeral expenses as a preferred claim.

EXECUTIONS.

1. 1. A firm named A. S. Co. is owned entirely by Mr. A. S. Is a judgment against this A. S. personally of any advantage to me, or how in any way can I recover the debt?

2. Is it unlawful for a man, after having a judgment against a firm, to wilfully go to the money drawer of said firm in company with a legal officer and take the money?

A. 1. If judgment is secured against A. S. personally, and the judgment is not promptly satisfied, the creditor may levy upon any property belonging to A. S. and not exempt from execution, even though the property may be used by A. S. in a business carried on by him under some other name. Actual ownership is the important point, not the name under which the owner may choose to carry on his business.

2. It is not lawful for a judgment creditor to take money from the custody of the judgment debtor. This can be done only after an execution has been duly issued covering such money and after the money has been levied upon thereunder.

2. Are household goods taxable, and if so to what extent? Also in case a concern gets judgment against one, can his furniture be seized to satisfy same?

A. The tax law in many States provides that those articles shall be exempt from taxation which, by another statute, are exempt from levy and execution to satisfy a judgment. These articles include a number of absolutely necessary pieces of household furniture and utensils, when belonging to a householder or to one having a family to support. The list contains a number of specified kitchen, dining-room and bedroom utensils and articles of furniture, the family wearing apparel and the necessary tools of a trade, or professional books and instruments. These articles are exempt from taxation, and they are also exempt from levy and sale to satisfy an execution, except in the single case in which the execution shall have been issued upon a judgment recovered

upon a demand either for work performed in the family as a domestic, or for the purchase money of one or more of the articles so exempt. Even a necessary household article cannot be bought upon credit and then held exempt from claim of the seller for the purchase price of that article.

EXECUTORS.

(See also Administrators.)

1. If a man wishes that the executors of his will shall not be required to give security, they being his own sons and the chief beneficiaries under the will, how can he accomplish this purpose?

A. Ordinarily an executor is not required to give a bond unless the will so directs, the theory being that the court is justified in trusting one whom the testator has trusted. But without regard to the provisions of the will an executor will be required to give a bond when either of the following objections has been established against him to the satisfaction of the judge: (1) That his circumstances are such that they do not afford adequate security to the creditors or persons interested in the estate; (2) That he is not a resident of the State, although a citizen of the United States; but it is expressly provided by statute that "a person against whom there is no objection except that of non-residence is entitled to letters testamentary without giving a bond if he has an office within the State."

2. A person recently deceased left a note in a bank which has fallen due since his death. Could the administrator, who is not likely to be in funds to pay the note for some time, renew it by indorsement, and would there be any danger that the indorsement might bind him as well as the estate? In what shape must his signature appear if he is not to be personally bound?

A. An executor or administrator cannot bind the estate of the deceased by a negotiable instrument. The making or indorsing of such an instrument will bind him personally, but not the estate. Even though he signs expressly as "executor of A B," the liability remains personal. If he wishes to bind the estate, without incurring any personal liability, he may enter into an agreement to pay "only out of the estate

of C D" or "out of the estate of C D, and not otherwise," or by any other formula showing plainly that the liability is that of the estate, and not personal to the executor or administrator; but paper bearing such restrictions is not negotiable.

3. 1. Can an executor pay a bill of $10 or less, or what is the largest amount he can pay, without having the claim verified before a notary according to law? The claim here referred to is one arising out of a debt contracted by the deceased prior to his death.

2. Within what time do the laws require that an executor's accounts shall be made up and ready for final settlement?

A. There is no distinction made by New York laws as to the amount of a claim for which an executor should require vouchers and an affidavit. The statutory provision is as follows: "The executor or administrator may require satisfactory vouchers in support of any claim presented, and the affidavit of the claimant that the claim is justly due, that no payments have been made thereon, and that there are no offsets against the same to the knowledge of the claimant."

2. The laws do not fix any definite time as the limit within which an executor must make his final accounting. Whenever a year has expired since the grant of his letters, the court may compel an executor to make an accounting of all that has been done up to that time. If the estate is then in a condition to be definitely settled this may be done.

4. A bank fails in which the executor of an estate had placed part of the estate's funds. Does the loss fall upon the estate or the executor?

A. When an executor, attorney or other agent deposits money belonging to his principal he cannot take too much pains to make the fact perfectly clear that the deposit does belong to the principal, and not to himself. If this fact is not made clear before a loss occurs, by a suspension of the bank or otherwise, the loss will have to be borne by the agent personally. The courts will not allow an agent to leave money in a bank under any doubt as to ownership until a loss occurs, and to decide then that the money so lost

was not his own, but that of the estate or other principal represented by him. If such a course were allowed unscrupulous agents could put off all their private losses upon their principals. The rule is this: There is a presumption that each deposit belongs to the depositor himself.

5. 1. Has the executor of a will, as such, any authority to sell real estate if the will says nothing about it?

2. May the executor be also a legatee under the will?

3. If he is living in another State must he give a bond in New Jersey?

A. 1. An executor, as such, has nothing to do with the real estate of his testator in New Jersey unless the will confers upon him authority to deal with the realty or unless the debts of the testator are greater than his personal estate will suffice to pay. In this latter case it becomes the duty of the executor to report the facts to the Orphans' Court and apply for authority to sell part of the real estate in order to pay the remaining debts.

2. An executor may be a legatee under the will. In fact it is common practice to appoint as executor the devisee or legatee to whom the greater part of the property is to go.

3. A non-resident executor is required to give bond, under the New Jersey statutes, unless the will expressly provides that he is to serve without being required to give security, in which case no bond will be demanded.

6. In settlement of an estate where the heirs are all of age, the estate consisting of real estate and personal property (no debts), personal property mainly due bills against the heirs, the will leaving the real estate to one of the heirs at fixed price, each heir to have equal share of the value of real and personal property, does the law require the executors to hold appraisement including due bills, or can the executors in settlement accounts for the property, make distribution according to the will and take receipts from the heirs, and will this be legal in final settlement?

A. The courts of Pennsylvania hold that an adjustment of accounts by executors with the consent of all parties in interest, without the forms prescribed by law for appraisement and audit in open court, is valid and binding. The

question has recently been decided in the Orphans' Court of Philadelphia. In that case the executors were the widow of the deceased and two persons not entitled to anything under the will. All parties in interest were of full age and capable of contracting. A settlement was made by which it was agreed to hold the executors harmless for any damages, claim or demand which might be made upon them in consequence of their consenting to relieve the estate of the expense of filing and auditing said accounts, as required by law.

7. An attorney, as executor, settles up an estate, collects in all debts, etc., and refuses to pay creditors. He has given no bonds, and a judgment against him is worthless. What can be done?

A. There are several ways in which an executor may be compelled to do his duty, notwithstanding the fact that he may have given no bond. Any creditor or other person interested in an estate may, by affidavit, present proof to the court that the executor has failed to return an inventory, or a sufficient inventory, within the time prescribed by law. If the judge is satisfied that the executor is in default, he will make an order requiring the delinquent to return a proper accounting.

8. Has the executor of an estate a right to compromise a debt owing to the estate he is settling when he thinks it is for the best interests of the estate to do so?

A. It is the common law duty of an executor to compromise a debt whenever the interests of the estate require him to do so. He is not liable for any outstanding debt due the estate unless there has been gross or collusive negligence in failing to collect or in compromising it.

9. 1. J made a will, leaving all his property, real, personal and mixed, to his wife. He made her sole executrix. If she dies simultaneously with him, leaving children, will the court appoint guardians and executors? Also, if she died soon after J, without making a will, would the court appoint an administrator and guardian?

2. J provides that in the event of the death of his wife before or simultaneously with him his real, personal or mixed preperty is to go to his children. Should he not name an executor and guardian to

serve in the event of his wife's dying before or simultaneously with him?

A. 1. A will is not to be allowed to fail for lack of an executor. If no one is named as executor, or if the person so named dies, refuses to serve, or is found to be incompetent, the court will appoint another to attend to his duties and carry the provisions of the will into effect.

2. If a testator has any fear that the person named as executor may be unable to serve, and if he has in mind any second person whom he would much prefer to all others to act as executor in that case, it is well for him to name such person as executor in the alternative, that is, to serve as such in case the person first named is for any reason unable or unwilling to serve. In fact any number of persons may be named in the will in this way, the first to serve, if he will and can, the second if the first does not, the third if neither of the first two serves, and so on to the end of the list.

10. I notice your reply in regard to fees as executor of an estate—"Not exceeding $1,000, 5 per cent; on all sums between $1,000 and $10,000, 2½ per cent, and on all sums above $10,000, 1 per cent." If there are two executors does each get the above percentage, or is it divided between them?

A. In some States the former rule was to allow only one commission and to divide it between them according to the service each had rendered. But later acts provide that when the personal estate is not less than $100,000 over and above all indebtedness, each executor, if there are not more than three, shall be entitled to the full amount of compensation he would have received if he had been sole executor.

11. A, in making his will, appoints B and C executors, but makes no stipulation as to giving bonds, etc. Must B and C give bonds, or if A had intended that they should ought he to have stated so in his will?

A. Ordinarily in some States an executor is not required to give a bond unless the will so directs, the principle being that the courts may trust one whom the testator has trusted. But the courts have held, and the law now requires, that an

executor must give a bond where either of the following objections is established against him to the satisfaction of the judge: (1) That his circumstances are such that they do not afford adequate security to creditors or persons interested in the estate; and (2) that he is not a resident of the State, although a citizen of the United States.

12. An executor holds $4,000 of 5 per cent railroad bonds. Widow is entitled to and for several years was paid the revenue. For last five years the coupons have not been paid. To close the estate the bonds, with overdue coupon making a face value of $5,000, have been sold at auction for $4,000. Is this $4,000 to go to credit of principal of the estate or $3,200 to the estate and $800 to the widow?

A. We have not been able to find a case where the exact question raised by our correspondent has been decided; but the analogy of similar cases leads us to believe that, unless strong evidence could be adduced to show that the principal had deteriorated in value either more or less rapidly than the interest, the courts would hold that $3,200 should go to the estate and $800 to the widow. An attempt was made to compel a widow to forego so much of her interest as would suffice to restore the whole of the principal. The court held that the loss of interest arising from the fact that the bonds had been bought at a premium was the equitable proportion of the loss to be borne by the widow, and that the final loss of principal, if any, should be borne by the remainder men.

13. A. B. dying some ten years since left a will giving his four daughters (his only children), his estate, both real and personal, and named them as executors. The personal estate has been closed up. By a provision of the will he directed them to sell the realty whenever a majority of them agreed or resolved to do so. In the hope of appreciation in its value they unanimously agreed not to put it on the market and it is held by them to-day. Recently one of the daughters died leaving a will in which she devises her property to certain of her children. Does the provision in A. B.'s (her father's) will relative to disposal of real estate still hold, or can the heirs of deceased daughter obtain their mother's portion by partition suit or otherwise?

A. In the case put by our correspondent the executors have one joint and entire estate in the property of the dece-

dent. The death of an executor does not change the quality of the estate; the survivors are vested with full power in the management of the property, and the decision of a majority is as binding as if all had survived. In the absence of bad faith on the part of the survivors in the execution of their trust, the court will not control their discretion, and a partition suit by the heirs of the deceased sister will not lie.

14. I am an executor, and under the will am called upon to hold part of the estate for the benefit of heirs and pay them the income. The will reads thus: "To safely invest the personal, in manner and upon securities however in their discretion." Question: Am I confined to what is known as trust fund investment securities, which I understand to be mortgages upon improved real estate, 50 per cent, United States, State, city and county bonds? Or can I invest in such securities as a careful investor would select for himself as a safe investment?

A. The terms of the will leaving the investment to the discretion of the executors takes the case from the legal restrictions, and the rule is the exercise of a wise discretion.

15. As executor, I am authorized by will to sell an estate and reinvest the proceeds "in the same kind or character of securities" as came into my possession. About two-thirds of the property was in real estate, and the rest in railway stock. If I sell the real estate, must I again invest it in that way? And if I sell the stock, can I invest the proceeds in railway bonds without violating my trust?

A. The proceeds of the real estate should be invested either in real estate or in bonds and mortgages; and the proceeds of railroad stock either in shares or bonds of railroads. This would satisfy the limitation.

16. Two brothers inherit equally through the death of a relative, certain moneys that she had the use of during her lifetime. Letters of administration must be taken out. The estate is in Canada. The younger brother lives there. He wishes the elder, who is a resident of the United States, to sign a renunciation of his right to administer, and so take the matter into his own hands. The elder receives forms from a lawyer for that purpose. Can the elder, being a resident of the United States, administer on the estate?

A. A citizen of the United States may act as administrator under the laws of Canada, but it is not probable that

he will be appointed while there is another person living in Canada and having an equal claim to the appointment. There may be a joint administration, but the courts of Canada discourage this, holding that a single administrator can more easily and readily settle the affairs of the estate. In the case put by our correspondent it will not be necessary for him to require a bond from his brother as sole administrator.

FACTORS.

1. Our commission agent in London had some orders from us for certain goods to buy for our account. For this service we paid him 2½ per cent commission and all his expenses. He sent us an invoice for these at the rate of five shillings per dozen, and in accordance with this invoice we paid the duty here. We have now positive proof that he defrauded us out of one shilling three pence on each dozen, besides the extra duty we had to pay. Can we institute in England a criminal charge against this agent and have him arrested?

A. The commission agent in this case would be indictable under the old English statute, which provides that whoever shall, by any false pretense, obtain from any other person any chattel, money or valuable security, with intent to defraud, shall be guilty of a misdemeanor, and being convicted shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without solitary confinement, and whosoever being a trustee of any property for the use or benefit, either wholly or partially, of some other person, shall, with intent to defraud, convert or appropriate the same or any part thereof to or for his own use or benefit, shall be guilty of a misdemeanor.

2. A places in B's hands eleven cases of wine for sale. B sells one case to C, and several weeks after a party representing himself as a hotel proprietor (say D) calls at A's office, stating C referred him. A sells him (D) a quantity at a lower figure than the sale price of one case, and finds later that in reality D purchased simply to sell C at a profit. Is B entitled to brokerage, A being an innocent party in the matter?

A. We do not see that B had anything to do with A's sale to D, or why he should claim brokerage, unless the wine sold was part of the eleven cases consigned to him.

3. A gets a certain amount of goods from B at a stipulated price, which allows A a commission. A sells the goods at over the price given by B. Is A entitled to the commission and average? And is this the general way of commission men on all classes of goods which they may sell?

A. If A is a commission merchant, in the absence of special agreement or custom to the contrary, he is entitled only to a commission on the price for which he sells the goods. A commission merchant is an agent, and it is a general principle of the law of agencies that the agent shall not be allowed to derive a secret profit on any transaction connected with his agency. This rule is applied with especial strictness to factors. If a factor gets more for goods than the price for which he was authorized to sell, the principal is entitled to the surplus.

4. We are a commission house receiving goods on consignment and accounting for the goods sold at certain stated periods, deducting our commission, etc. In several cases we make advances to the manufacturers upon the goods delivered, but before these goods are sold, in fact considering the goods in question as security for the money advanced. Can a creditor of such a manufacturer attach these goods while in our possession and compel us to relinquish them without security, or have we a first lien upon them?

A. A factor has by common law a general lien upon all the goods of his principal in his possession, and upon money or securities in his possession taken in exchange for goods sold; these may be held both for the payment of advancements, charges and disbursements made in reference to those particular goods, and also for the settlement of a general balance of accounts between the principal and agent, arising from the agency. The lien is superior to all claims of subsequent purchasers, and it cannot be defeated by a levy of attachment or execution against the principal, or by summoning the factor in garnishment. All that can be secured by any of these processes is the value of the goods beyond the

factor's claim. The factor's lien is extended by statute to cover goods shipped to him, in some circumstances, which have not yet come into his possession.

FENCES.

1. Where no fence is at present, and the owner on one side desires a fence of posts and boards placed on the line dividing the property, must he bear all the expense, and must he obtain the consent of the owner on the other side before erecting such or any fence?

A. Each owner must make and keep in repair one-half of the fence; when a division cannot conveniently be made, the fence must be built and kept in repair at the joint and equal expense of the owners of the land on each side. The fence may be built without the consent of both owners, though each is liable for half the expense. The manner of procedure is regulated by the local laws of the place in which the fence is situated.

2. I own a piece of land situated near city line. It has never been fenced in, and is used as a short cut from one street to the other. Does the fact of its being used as such in any way injure the title, and what does the law require?

A. If lands situated, as our correspondent describes, are left unfenced for a continuous period of twenty years, in some States, but varying in others, those persons who have used part of them as a pathway during that time may acquire a prescriptive right to continue such use, which will be good against the owner. For this reason it is important, at least once within the legal period, to take steps to prevent the public use of private lands. A very short interruption of such use is all that is necessary, as a prescriptive use, in order to give a permanent right, must have continued through the years without any interruption whatever.

FIRM NAMES.

1. What is the correct form of address, "Messrs. The John Smith Co.," or simply "John Smith Co."?

A. Where a company has a corporate existence, and is

addressed as a corporation, as "The Pacific Bank," "The Lowell Manufacturing Company," it is not customary to prefix any title to the corporate name. But where individuals are doing business under a partnership title or firm name that reads like a corporate designation, they may in spite of it have the prefix that is sanctioned by the rules of courtesy. "Messrs. Iron Belt Co.," "Messrs. John Smith Co.," "Messrs. Fancy Rail Co.," are all proper, if these are only partnership titles.

2. Do the laws require of a firm doing business under the name of a company, viz.: New York Paper Company, that the same must be incorporated, or can a person do business here under any style and name of firm he shall choose?

A. A man may start a business under any chosen style or title provided he makes no misrepresentation of the facts for the sake of obtaining property or credit. Smith cannot do business under the name of Smith & Co. for that implies that he has a partner, and is forbidden by law. Smith and Jones may do business as Smith & Co. or as Jones & Co., but they cannot do business as Smith, Jones & Co., for the reason specified, unless it is the continuation of an old partnership, made legal by the proper advertisement. But either of them or both of them may do business as the "The New York Flat Iron Co." if they make no misrepresentation of the facts to obtain property or credit.

FISHING AND GAMING.

1. Are fish considered wild game? A fisherman crosses my farm, but walks in the bed of the stream; can I hold him liable for fishing in forbidden waters?

A. The laws in reference to the taking of fish and those in regard to the shooting or hunting of wild game vary in the different States, but are considerably alike in their general provisions. It is usually provided that any person who shall knowingly trespass upon inclosed or cultivated lands, for the purpose of shooting or hunting any game protected by the act, or shall take any fish from private ponds or pri-

vate streams not stocked in whole or in part by the State, or after public notice has been given by the owner or occupant thereof, shall be liable to such owner or occupant, in addition to the actual damage sustained, in exemplary damages. The public notice is to be given by erecting signboards at various points.

FORECLOSURE.

1. In the event of a sale at public auction of real estate under foreclosure can the original owner, or mortgagor, claim the right upon any ground except fraud to redeem the property after term of sale contract has been signed by the referee and purchaser, 10 per cent of the purchase price has been paid and the auctioneer's fees also, but before the deed for the property has actually passed?

A. If a mortgage has been regularly foreclosed and the land sold at public auction, if the purchaser has paid 10 per cent. of the purchase price and entered into a satisfactory obligation to pay the remainder, and if the contract of sale has been signed by the referee and purchaser, and the auctioneer's fees have been paid, it is then too late for the mortgagor to defeat the sale. This is true unless there has been some fraud or irregularity in the conduct of the sale itself or in advertising it, or arranging some of the necessary details, or unless the price was grossly inadequate and there was also some other suspicious circumstance or irregularity attending the sale. It is not probable that the courts would set aside a sale for no other reason than the inadequacy of the price, but if this were glaring it would be sufficient, together with almost any other objection that could be sustained, however trivial it might seem to be in itself.

2. A mortgages to B two tracts of land, one in one county, the other in another county. B forecloses his mortgage and obtains judgment of foreclosure and sale. Where and how must the property be advertised? Where should the property be sold?

A. The statutes are not always as clear as they should be upon such points. Information is to be had only from decisions and the rules of court, and it appears that the judge shall direct what officer shall sell the property and where the

sale should be held; if this is not done the sheriff of each county will conduct the sale of the property lying within his jurisdiction. The property must be advertised also as directed.

3. A leases a house, and by written permission he subsequently sub-leases it at a profit. The property changes hands through foreclosure of mortgage. How does this affect A and B? Can the new owner demand possession of the premises?

A. The usual effect of a foreclosure sale upon a lease made subsequent to the mortgage is to extinguish the lease. The purchaser becomes entitled to the possession of the premises. That sale does not have this effect unless the tenant has been made a party to the foreclosure suit. If he has not been made a party, the purchaser cannot eject him until his lease has terminated.

4. Certain property was mortgaged about twenty-five years ago, the time for which the mortgage was given having expired long since. The mortgagee wishes to call the loan, or, on the other hand, have the mortgage renewed. Affairs are so situated at the present time that it would be a very difficult matter for the mortgagor to raise any money on the property to cancel said mortgage and likely the mortgage will have to be foreclosed. The interest has been paid up to date. Please inform me how much time the mortgagor should be given to pay the mortgage before foreclosure proceedings are instituted.

A. The debt here described by our correspondent is still enforceable by foreclosure, if necessary, notwithstanding the fact that "the time for which the mortgage was given expired long since." Proceedings for foreclosure may be instituted at any time and the length of time necessary to carry them to completion will depend to some extent upon the state of the court calendars and the ingenuity of the defendant's lawyers in securing delays.

5. A foreclosure of country property is to occur and the property is put up at auction in three separate parcels. No one in advance can determine the value. The mortgage is in blanket form covering all for $10,000. Should the first parcel not bring the face of the mortgage, then parcel No. 2 is put up, and so on. Does the sale stop

just as soon as the full amount of the mortgage and expenses is reached?

A. If mortgaged property is sold in parcels the sale is to be stopped as soon as the proceeds are sufficient to pay the mortgage debt and the expenses of advertisement and sale. To allow the sale to continue beyond that point would usually be an injustice to the mortgagor and of no benefit to the mortgagee. If the mortgagor so requests, a court decreeing a foreclosure will stipulate the order in which the various parcels are to be sold. If there is nothing of the kind in the decree the officer making the sale will, as a rule, himself follow the mortgagor's wishes in the matter.

6. I had a farm which I exchanged for a small house. Said house was mortgaged for $5,000, which mortgage I assumed. I paid interest on same for three years, when I was compelled to go away, and gave up the house. The mortgage was foreclosed, and the house sold for $4,000. Can I be sued, and must I pay the difference?

A. Our correspondent should not have assumed the payment of the mortgage; then he would have lost only the value of the property exchanged for the house. Having become personally liable for the mortgage he can be held to pay the difference betwen the full face of the mortgage with interest to date and costs of foreclosure, and what was realized from the sale of the premises.

7. A holds a mortgage on B's house. B dies before the mortgage becomes due leaving no will and no direct descendants except cousins, whose whereabouts are unknown. In the meantime the mortgage becomes due. An administrator is appointed to take care of the estate. Can A foreclose immediately and how? And if property on which mortgage is given is insufficient to satisfy mortgage has A the right to levy on personal property such as furniture, etc.?

A. A creditor's right of action is not absolutely suspended during the first year after the appointment of a representative of his debtor; but if he prosecutes his suit he must do so at his own cost and not at that of the estate, unless he can show that the administrator has been at fault in regard to the adjustment of the claim. Morover, a favorable verdict will entitle him merely to a pro rata share

of the assets; judgment amounts only to a liquidation of the claim, and does not exclude the administrator from affirming that the assets are not sufficient to pay all the debts. In a case such as that put by our correspondent, where a mortgagee wishes to foreclose his mortgage and to have judgment for so much of his debt as the real estate will not bring, he should present his claim upon the day appointed by the administrator, and when, if it is necessary to bring a foreclosure suit, the administrator should be joined with the heirs as defendant.

8. Some real property was sold under foreclosure of a first mortgage without notice to a third mortgagee. The second mortgagee joined in the proceedings, and the amount due on that mortgage, as well as on the first mortgage, was adjudicated by the court. A sale was ordered, and after due and proper notice to the owner was effected. Two months elapsed, and then discovery was made of the dereliction with regard to the third mortgage. Can the case be reopened by supplementary proceedings, so as to force a resale of the property?

A. A court will sometimes declare a foreclosure sale invalid, and direct that the property be advertised and sold again; this will not be done, however, except for very pressing reasons, and though the matter is left almost entirely to the discretion of the court, it will probably not be possible to have such an order made in this case. The rights of the purchaser are to be taken into account, as well as the rights of the other parties, and the purchaser's right to retain the property will usually prevail if the sale has been fair and free from fraud. It is to be remembered that the only parties likely to object to this sale are the mortgagor or the holder of the first or second mortgage, or the purchaser, while the sale was perfectly valid and free of fault so far as any of their interests were concerned; they had full notice and knowledge of all the facts and there is no ground made known to us upon which any of them can reasonably complain. When the error complained of is, as it is in this case, simply that a junior mortgagee was not made a party to the foreclosure, the purchaser acquires an estate subject

only to the lien of such junior mortgagee, and the purchaser himself may afterwards institute proceedings to foreclose this lien.

FRAUD.

1. A held a lease interest in certain real estate. B held fiduciary relations to it. C, as attorney, was foreclosing certain mortgages for D. B and C represented to A that D held liens fatal to his interest, unless they could be secured. A decided upon this advice to buy the property at foreclosure sale and made a sealed agreement with C that he (A) would meet all the liens. C was the purchasing party for A. A assigned the agreement to E, who was to secure its execution. The property was sold and E took title by consent of A. E charged to A the purchase money. Facts discovered establish that the foreclosure suit was fraudulently arranged and determined by B, C and D to secure out of the purchase money the alleged superior liens which had no legal validity as against A. By false representations of C to the referee, he was permitted to make the settlements after the sale, and hand over to the referee the receipts, out of which he, the referee, made his report falsely, but unintentionally, to the court. If A seeks to annul the agreement made with C, on the ground of fraud and conspiracy in creating the agreement and securing its execution by the assistance of B, D and E, can he hold these parties defendants with C, or what remedy has he to recover his interest?

A. A judgment or award may be impeached or set aside collaterally for any fraud which consists in a meditated and intentional contrivance to keep the parties or court in ignorance of the real facts of the case, and obtain judgment by such contrivance. When two or more persons have entered into a conspiracy to defraud the plaintiff, any act done by either of the conspirators, in pursuance of that object, and in accordance with the general plan, becomes the act of all; each conspirator is equally responsible for it. It is a rule of law that all persons concerned in a fraud, whether by previous agreement or not, may be joined as defendants.

FREIGHT.

1. A vessel is chartered to bring a cargo of molasses, the freight to be paid on the gross Custom House gauge of the casks delivered. Can the master before the cargo is discharged demand from the con-

signees of the cargo an advance on the freight, or must he wait until he can procure a certificate of the gross gauge as above before he can demand the freight? Can the master refuse to allow a representative of the consignees to go on board the vessel and into the hold while discharging to see that the cargo is properly handled, without unnecessary wastage by the stevedore?

A. The master loses his lien for freight if he delivers the cargo, and is entitled to payment or security for the amount due. He is under no legal obligation to permit a consignee to go on board, although he may do it as an act of courtesy.

2. Is there any penalty attached to shipping goods under a wrong classification to secure a lower rate of freight outside of the restoration of the goods to proper classification by the railroad company?

A. There is a penalty under a Federal law (the Interstate Commerce Act) for such underbilling or false classification of goods as our correspondent describes. We assume that the goods are to be carried from one State or territory to another, or that the carriage is between a domestic and a foreign point. If it is a case wholly within a State the statutes of that State governs the penalty. Any one who by "False classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding $5,000 or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court."

3. We order a lot of clay to be delivered free on board canal boat, freight to be paid by us on delivery of cargo. Our clay is loaded by shipper on top of a lot belonging to another party, the two lots

being separated by loose boards. Two days thereafter at 7 A. M. we begin unloading, and are compelled, by the manner in which the clay is loaded, to put more men than is usually required in a boat to keep carts busy. We work steadily, except Sunday and New Year's day, until 9 A. M., January 4, with this extra force of men before the clay is discharged. The agent for the boat now claims five days' demurrage.. Is that a just and legal charge?

A. The boat must allow a reasonable time for the unloading before demurrage can be charged. Exactly what is reasonable depends upon the size of the cargo, and the circumstances of each case. It is clear that five days cannot be charged against our correspondent. It should be left to a referee or arbitrators, who will hear all the evidence and render judgment accordingly.

4. Purchasers frequently request that their packages be marked in such a way as to mislead the carriers, thus changing the class and reducing the charges for freight. Is there not a law to punish the shipper who becomes a party to this deceit?

A. The Interstate Commerce Act provides that "any person and any officer, or agent of any corporation or company, who shall deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false representation of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor." The punishment for each offense is a fine not exceeding $5,000, or imprisonment in the penitentiary for a term not exceeding two years, or both, in the discretion of the court.

5. A merchant enters a lot of goods for bonded warehouse. Can the steamship company, whose vessel brought the goods, compel the merchant to pay the freight on the same as long as they remain in bond, or has the merchant the right or privilege to defer payment of freight until he withdraws the goods from bonded warehouse?

A. The freight is due to the ship on the unloading of the goods, and the consignee must pay the same if it is demanded.

GENERAL AVERAGE.

1. In general average on a ship's cargo is it necessary to furnish the adjusters with the market price of goods, less charges, discounts, etc., and invoice price from factory?

A. The value of goods for general average purposes is the market value at destination less duties and other charges, discounts, etc. This value may be ascertained in a variety of ways, and the owner of the goods may properly be called upon for some information looking towards a determination of the value. But if the other questions are fully answered it is not necessary, nor is it usual, to require that the consignee or owner shall tell the "invoice price from the factory."

GIFTS.

1. Please tell me what the words *"Gifts inter Vivos"* mean, as I find it often quoted.

A. This is a legal term meaning a present or gift by one not in fear or in contemplation of death, and the recipient must have indicated his willingness to accept. This gift is then irrevocable and consists only of personalty.

2. What is the meaning, please, of the somewhat common phrase, *"Gifts causa mortis"* seen in connection with wills?

A. This is a gift depending upon the giver's belief of his near approach to death, his last illness, accompanied by an actual delivery, and to consist of personal property only. It takes effect only at his death.

3. A gentleman gave his daughter a check for $500 at the time of her marriage. Five years have now elapsed, during which time said gentleman has withdrawn all his money from the bank. How about it?

A. No gift is complete until delivery. A check is a mere order for the payment of money, and such a gift is not complete until the check is paid or certified by the bank. In no case will the gift of a check serve as the basis of an

action against the donor. If he revokes his check or withdraws his money there is nothing the recipient of the check can do about it.

GOOD WILL.

1. I am one of four partners in business. By express stipulation the value of the goodwill, which has never been determined, is mine alone. A redistribution of the shares of each partner is desired; taking into consideration, for the first time, the goodwill of the business, I am in doubt, in this event, how to arrive at the value of the goodwill.

A. The best basis upon which to estimate the value of the goodwill of any business is the price at which it could be sold. There is no better way of arriving at this than to have it appraised by disinterested persons well acquainted with the business and locality.

GUARDIANS.

1. A party is made guardian of three children, each of whom have an equal interest in property which has been held by the guardian in common. The children have each been paid unequal sums and at different times. The surplus income has been invested as it accumulated. One of the children having attained majority it becomes necessary to divide the property and adjust the income. Can you suggest a safe and proper method of settlement?

A. If the accounts have been properly kept, they will show what is due from the income to the child who has reached his majority. If the property can be divided without being sold, he should receive what is coming to him and sign a release. If the property is in real estate that cannot be divided without being sold, an order of court may be obtained for such sale and settlement.

2. A became guardian for the children of his deceased brother. Has A the right to pay to any one of the children his or her share of the estate, which consists of personal property only, at any time after the child has become of age?

A. When a ward has reached his majority his guardian may settle with him, notwithstanding the fact that he may be

guardian also of other minors of the same family. The ward having become of age the guardian has merely to present to the court a petition praying for a judicial settlement of his account and a discharge from his duties and liabilities. All others interested in the matter will be cited to appear, and a settlement will be made which will relieve the guardian and his bondsmen from further liability.

3. The father of a motherless child dies. In his will is found a statement to the effect that he considers an aunt the best guardian for his child, but he does not make a formal appointment. If he had made such an appointment in his will, would it have been effective?

A. It is provided by statute in Pennsylvania that "every person competent to make a will as aforesaid, being the father of any minor child unmarried, may devise the custody of such child during his or her minority, or for any shorter period." Under this act a father can appoint a guardian by will, and the guardian so appointed cannot be supplanted or removed except by a decree of the orphans' court. If no such appointment is made the orphans' court of the county may appoint a guardian. The father's wishes will naturally have weight with the court, and the guardian he can be shown to have preferred will usually be appointed, especially if he is of the same religious persuasion as the parents of the minor.

4. A dies leaving a sum of money in trust for a grandchild aged eight years. The will was probated and filed in one county and the child's uncle has been appointed guardian by a judge in another county. Has the guardian the right to inquire into the management of said trust fund; how invested, etc.?

A. If a guardian wishes to know how his ward's money is being invested by a testamentary trustee having it in charge his readiest means of finding out may be by putting the question to the trustee direct; the trustee is not legally bound to answer, but in most cases he would have no objection to doing so. Testamentary trustees do not make annual reports in all cases, but they may do so if they choose, and in some instances they make such regular reports. The judge within

whose jurisdiction the property is may demand a report as often as he wishes. The statute provides that a petition praying for such a report may be presented at any time "by any person beneficially interested in the execution of any of the trusts; or by any person in behalf of an infant so beneficially interested." If the trustee has not made an accounting within a year of the time of presenting any such petition the judge will grant the petition and order the report to be made; if less than a year has elapsed since the last settlement of the trustee's account the judge will use his discretion in the matter. When the report has been made it will be open to the inspection of the guardian or any other person wishing to see it.

5. A grandfather bequeathed to his grand-daughter some real estate. Her father was appointed as guardian. Can he, as guardian, when making his final accounting, charge against the income bills for board, clothing, schooling, wedding expenses, etc.? The father has a sufficient income to support his family.

A. The general rule is that a parent is bound to support his minor children, even when they have property of their own. But this rule compels him to furnish them with only such things as may strictly be regarded as necessaries; but if the child's property is sufficient, the courts will often allow the parent to devote the income to the child's support and education, especially if the parent's means are not sufficient to give to the child an education suitable to the fortune which he is to enjoy.

GUARANTY.

1. Five years ago a firm hired premises from the owner for an indefinite time, by the month, at a specified monthly rent, the owner reserving the right, whenever he chooses, to retake the premises or increase the rent. The firm sublets part of the premises by the month at a specified monthly rent, and for the first month's rent gives the sub-tenant the firm's receipt, adding to the receipt the following: "It is understood and agreed that the said rent shall not be increased from the above during our occupancy of the premises, unless and except the rent of said premises shall be increased on us by the owner or his agent." No paper was signed by the sub-tenant. The old firm was

dissolved on the death of one of the partners, and a new partnership was formed by the surviving partners, who bought out all the interest of the deceased. The new firm and said sub-tenant continue to occupy the premises as before, without any new agreement. Is the original agreement with the sub-tenant binding on the new firm?

A. A common lease to or from a firm for a specified term is a property which survives the dissolution. All the partners continue to be bound for the rent, all are entitled to the beneficial use of or interest in the lease, and all are bound to a sub-tenant holding for a definite term. But if it is stipulated that it be held during the partnership only, the lease is terminated by the dissolution.

2. How long does a bond of indemnity hold good and binding on sureties, if no time is stated in instrument given? Bond is given by parties in Wisconsin for a person in that State who receives goods on consignment from a New York house.

A. It is well settled that an indemnity bond to cover goods furnished on credit, without any restriction as to time, continues until revoked, though, of course, the terms of the credit as expressed in the bond must be strictly adhered to in all respects, as any change in these would discharge the guaranty.

3. Your reply to my inquiry is satisfactory except that one point has not received due consideration, viz.: The fact that from the judgment against A he did not appeal; hence the amount due by him to the bank has been judicially determined. What right has the surety to go into that question prior to the surety's connection with the transaction? This view, it seems to us, would limit the reforming the account to that period. There is no priority of contract between bank and surety prior to that time. The mortgage was deposited as collateral security for what was due at the time of deposit. What was due at that time has been judicially determined by suit.

A. This is a case in which a married woman executed a mortgage on her separate estate as collateral security for debts due at the time the mortgage was executed, and such as might afterward become due from her husband to the mortgagee. Suit being brought and referred, the defense of usury was set up. The referee found the contract not tainted with usury and decided adversely to the defendants. From this

decision the wife appealed, the husband not joining. The appellate court overruled the referee's decision and ordered the accounts reformed. We were asked to say whether the wife had any claim to have the reforming apply to debts which became due prior to the execution of her mortgage. It seemed to us then, and after further consideration we still think that the surety has all of the rights which the principal would have had if he had appealed. We hold also that she had a right to appeal independently of the principal, and that his having lost the right by default did not affect her right.

4. A sells B three carloads of material. In due course they are shipped and upon arrival at B's works they are rejected, B claiming that the goods are not up to the guarantee. A instructs B to return the goods to the transportation company to be reshipped elsewhere. B returns two cars only, and when asked for the third car he says he has used the goods. B admits that the two cars rejected ran over 3 per cent higher than the guarantee in the contract, but claims that the car which he retained was 4 per cent below the guarantee. A holds a sample taken from every package shipped in the car which B used and did not return. A had no trouble in selling the three cars as soon as B rejected them, which indicates that the quality must have been all right. What are their respective rights?

A. When goods are sold with a guaranty of quality, as in this case, the buyer may use up the goods and then recover damages for their inferiority. Acceptance in such a case is not a waiver of defects in the goods, as would be the fact if there were no guaranty; but a guaranty survives acceptance and may be enforced after acceptance and use of the goods. A buyer has no right, however, to accept part of the goods and reject another part; this would be to force upon the seller a contract to which he had never assented. The buyer in this case was entitled to use up as large a part of the goods as he needed to use in order to test their quality. Having made this test he was bound to accept them all or reject them all. If the seller had cared to insist upon his rights he could have compelled the buyer to accept the other two cars after his acceptance of the first. The seller did not

insist upon this, however, but willingly took back two of the cars. This substitutes a new agreement for the old one by the mutual consent of both parties. It only remains now to ascertain the facts about the first car and fix the damages, if any. The buyer must show, beyond a question, that the sample he had tested was taken from the shipment made by this particular seller. He must explain satisfactorily his reasons for not allowing the seller to see the sample and be present at the test, if that is customary.

5. A talked over with us very fully the standing and prospects of B, who was anxious that we should extend credit to him. Some of the things A told us about the chances of B's success appear to have been very much exaggerated. In the course of the conversation A stated repeatedly that he would be glad to guarantee any debt incurred by B to the extent of $5,000 at least, and would willingly be held to that amount by any one should sell to B on credit. We have since made such sales; B never made any payment at all and he is now hopelessly insolvent. Is there any ground upon which we can hold A?

A. Under the law, one person cannot be held to answer for the debt of another unless the contract under which it is proposed to hold him, or some memorandum of it is in writing and signed by the person to be held liable. It seems that there was no such written guaranty in the present case. The person who gave the verbal guaranty cannot be held upon that, and he cannot be held at all except possibly upon the ground of fraud. If any of the statements made by him had reference to existing facts, if these statements were false and were known to the person making them to be false, or were not known to be true, if they were made with intent that they should be acted upon, and if they have been acted upon to the loss or damage of any person, that person has a valid claim for damages against the author of the misrepresentations.

6. A considerable percentage of the holders of the stock of the Metropolitan Street Railway Company have failed to deposit their stock. Can they collect the 7 per cent guaranteed by the companies which went with the merger?

A. We know of no reason why the 7 per cent. guaranty to which our correspondent refers cannot be collected, so long as the guarantor is able to pay it. The guarantor is a corporation, however, and stockholders are not individually liable. When the assets of the corporation are exhausted the guaranty is worthless.

7. A takes a bond and mortgage for three years from B. About one year after the bond and mortgage was taken A assigns same to C and guarantees the payment. Twenty years have now passed and the bond and mortgage is still unpaid; the interest, however, has been paid. Does the liability of A guaranteeing payment still continue, or did it cease by C allowing it to run after the bond and mortgage became due?

A. In determining the liability of a guarantor it is always imperative that the exact wording of the guaranty be carefully studied. If the wording of the guaranty is that the debt will be paid, or anything equivalent to that, the guarantor is bound to see that it is paid, and delay on the part of the creditor will not release him. If the guaranty is simply that the debt can be collected, or is collectable, then the creditor is bound to proceed promptly on default at maturity, and if he fails to do so the guarantor will be released.

8. A, an importer, sells to B, a jobber, a bill of merchandise. B refers A to his friend C, who on B's solicitation, gives to A a guaranty in writing in which he says: "I will guaranty the account which B bought of you." B makes an assignment and when the account is due A demands of C the amount of bill. C refuses payment on the ground that no consideration was received for the guaranty. Can A recover from C the amount of the bill?

A. A guaranty for which there is no consideration cannot be enforced. But a pecuniary consideration is not necessary. It is sufficient that there has been a benefit to the guarantor or to the person in whose behalf the guaranty was given. In the present case A, relying upon the written guaranty of C, gives credit to B, which he would not have given except for the guaranty. This is a sufficient consideration, and the contract of guaranty can be enforced.

9. I purchased an instrument to strengthen and cure me of weak

vision. In the book issued by the company they state that "whoever procures the sight restorer from us, paying us ten dollars therefor, and uses it faithfully and consecutively for six months according to directions, and returns it to us, proving that it has thus been used and that it has failed to benefit the eyes, we will refund the purchase price." In the face of this guarantee I made a demand upon them that they refund the money, as my eyes were no better, and they wrote me that the machine was bought outright and no conditions were attached to the sale. Can I recover the money paid?

A. Our correspondent is clearly entitled to recover in this case. It is of no consequence that at the very time of the sale nothing was said as to the published guaranty. The sale was made subject to that general guaranty and the sellers can be compelled to make their guaranty good or refund the money.

GUARANTOR.

1. A firm consisting of two partners, A and B, has recently been dissolved by the retirement of B. In settlement of my account against the firm I am offered a note signed by A and made to my order and indorsed by a third party, C. I decline to receive the note, and insist on the following condition: The note should be signed with the firm name (A & B), as I do not intend to release B from liability.

A. The partner A has no right to ask a creditor of the firm to take his note in settlement of an account to the release of B, unless the offered indorser C is an equal or better security. If the latter signs as surety, or as a guarantor indorser, the fact that the note is to the order of the creditor will make no difference as to C's responsibility for its payment. He is not a second indorser, or an indorser after the creditor, but a guarantor, and can be held by such creditor for the payment of the note, after protest and notice, if A defaults at its maturity.

HEIRS.

(See also Wills and Executors.)

1. These words from my grandfather's will I submit to you for opinions: "After the decease of my said wife I give and devise my said real estate to all my children share and share alike."

1. Two of his children died between the date of his death and

that of his wife. Are the grandchildren entitled to their parents' share?

2. One son leased the farm in March for one year, and the mother dying in July, he claimed the contract was void from that date. He continued to occupy and use the farm, taking all the proceeds. Had he a right to appropriate all the proceeds?

3. In December he paid the taxes and claims he can make them a lien on the real estate. Is this true?

4. Must each heir serve notice on him for a share of the profits of the farm for the coming year?

A. 1. If any of the said children were not living on the decease of the wife the grandchildren or other descendants will inherit their parent's share.

2. The lease was not valid beyond the life of the lessor, as she had no interest to make the subject of a contract after her death. The property then vested in the heirs, and whoever has since occupied it must account to them for its use.

3. Taxes when paid cannot be made a lien on the real estate, but are a proper charge against the personal of the deceased wife, if due before her death, and against the heirs, if the debt accrued afterward.

4. If the heirs are of age they may agree as to the management of the estate for their common interest. The court, on application, will appoint a guardian to protect the interest of any minor heirs.

HOLIDAYS.

1. My gas bill is presented on October 20. If paid within ten days there is an allowance of 10 cents per 1,000 feet. As October 30 is a Sunday I sent a check in payment of the bill on October 31, said check being accepted. When I send a check in payment of my November gas bill it is refused, the clerk stating that his instructions were not to accept payment for my November bill until I paid the allowance deducted from my October bill, which I had no right to deduct as the bill was not paid within the ten days. What is the law in this case?

A. If any person has a duty to perform on or before a given day, he is, of course, entitled to delay performance until the last day. Then if that date falls upon a Sunday, the law itself will excuse postponement until the following day,

provided the duty is of a kind the performance of which on a Sunday is not sanctioned. The rule is not the same, however, when a delay is granted as a mere privilege. When any person is legally bound to perform a duty upon a given day, but is allowed, as a favor or privilege, to postpone performance for ten days, the law will not add another day even though the last falls upon a Sunday; in that case the duty must be performed on Saturday, at the latest.

2. At a meeting of a social club or society it was announced that the annual election of officers of the society would take place on the 29th inst., as provided by the constitution of the society, but with this proviso: that if the 29th of November should fall on Sunday, then the election shall take place on the following day, which would be on the 30th inst. A discussion sprang up as to the validity of the election on the 29th inst. this year, as that is a legal holiday. Would the election be valid if held on that day?

A. A legal holiday is not for this reason a holy-day. All business on a legal holiday is legal and proper, except the presentation for acceptance or collection of bills of exchange, checks and promissory notes, and the opening of public offices.

HOTEL-KEEPERS.

(See also Inn-Keepers.)

1. A salesman was in a hotel in Virginia when that hotel was destroyed by fire. He had in his room at the time of the fire a trunk filled with samples used in connection with his business, and had also considerable personal belongings in his room, and these were destroyed. Would the hotel company be liable for the personal belongings, and would they also be liable for the samples in the salesman's trunk?

A. In many of the States there are statutes defining the liability of hotel-keepers for the loss of goods belonging to their guests. In the absence of such statutes there is considerable divergence in the views of various courts as to the common law rule upon the subject. There is no statute covering the subject in Virginia, and it appears never to have come before the courts of that State for decision. As to the wearing apparel and other personal belongings of the

guest suitable for the uses of a traveler, it is generally held that the hotel-keeper is liable absolutely as an insurer, even though the articles were wholly under control of the guest at the time of their loss. But as to goods carried by the guest for sale, or as samples of articles which he or his principal has for sale elsewhere, the sounder doctrine appears to be that the landlord is not liable for these unless the loss or damage was caused by his own negligence, or unless the goods were actually placed in his custody.

HUSBAND AND WIFE.

1. Ann Eliza Jones marries James Smith. What is the proper and legal signature for her to affix to a legal document after marriage?

A. A woman should sign all legal documents with her personal name. And the personal name of a married woman is that which she chooses for herself. A woman born of the Jones family is christened Ann Eliza, and before marriage she signs her name as Ann Eliza Jones. She marries Smith and then determines for herself on her new signature.

2. Please state what the law is governing the right of husband or wife, to open each other's letters by mail, or other delivery.

A. The rules of the Post Office Department, Sec. 566, Par. 8, provide that "neither husband nor wife can control the delivery of correspondence addressed to the other. When so instructed a postmaster must refuse to deliver letters to the husband which are addressed to the wife, or those to the wife which are addressed to the husband. In the absence of instructions to the contrary, the wife's letters should be placed in the husband's box, and delivered to him with his own letters, unless known to live separately." The penalty for opening another person's letters does not apply to the act, if committed after the letter was properly delivered, and in the absence of instructions to the contrary, it will be seen that a delivery of the wife's letters to the husband is a proper delivery. The husband who should open his wife's letters thus delivered to him, would not, therefore, in our opinion, be liable to punishment by the

United States under the postal laws. But in some States it is declared to be a misdemeanor if a person "wilfully or without authority opens or reads, or causes to be opened or read a sealed letter or telegram."

3. Can a wife who has left her husband maintain an action in replevin against her husband to recover their wedding presents?

A. Whatever is given or sold to a husband and wife in common belongs equally to each and to both of them. For the purpose of holding such property they are still regarded in law as only one person. It is not a case in which different persons own undivided parts of the same property; here each of the joint owners owns the whole. If the wife leaves her husband there is no ground upon which she can demand title to the property or control of it to the exclusion of her husband. If there is a divorce or legal separation the property may be disposed of under the decree, but meanwhile neither husband nor wife can by legal process take it out of the control of the other.

4. An answer in a recent issue of a city paper was: "Your wife having left you, you may lawfully marry again at the end of five years, if you hear nothing of her, or from her in the meantime." A says after five years she is regarded as one dead and no permission from court (or divorce) is necessary. B claims five years may be grounds for divorce, but the court must be consulted first before marriage. Which is right?

A. In some of the states, if any person whose husband or wife shall have absented himself or herself for the space of five successive years, without being known to such person to be living during that time, shall marry during the lifetime of such absent husband or wife, the marriage shall be void only from the time that its nullity shall be pronounced by a court of competent jurisdiction. This gives to every one whose husband or wife shall have been away five years without having been heard from, the right to marry again, and no permission of any court is necessary.

5. A man and wife jointly own a house in which they have carried on a bakery for a number of years. Three years ago the husband left his wife, she conducting the business alone since, and is now

desirous of selling the bakery. Can she do so legally, and is the purchaser safe in accepting a bill of sale from her?

A. The courts hold that where a husband allows his wife to carry on a business upon her own account, and without any control on his part, and especially in cases where he has deserted her, he will not be allowed to set up any claim to the property used in the business, even though he furnished her money to carry it on. Accordingly, in the case put by our correspondent it is within the power of the wife to give a valid bill of sale of the personal effects belonging to the business in which she is engaged.

6. Is a husband liable in law for all the debts incurred by his wife other than the necessities of life? Why do some husbands publish that they will not be responsible for their wife's debts?

A. The common rule law as to the liability of a husband for the debts of his wife prevails in most States. That rule is that the husband is bound to supply the wife with all necessaries suitable to her situation and to his own circumstances and condition in life. If he fails to do so, she may purchase such articles as are needful on his credit and he will be bound to pay for them. What are necessaries is a question to be determined in accordance with the circumstances of each case. Where the husband and wife are living together there is a presumption that she is his authorized agent for the purchase of such household articles as she may deem proper, and whoever supplies her with these in good faith and without notice, has a valid claim against the husband. It is to rebut this presumption that the husband gives notice, through the newspapers or in some other way, that he will not be responsible for his wife's debts. There is no law governing the publication of such notice, and it has been held to be good only so far as it is brought to the attention of the person dealing with the wife. If the husband furnishes her with necessaries himself, he has a right to prohibit any and all persons from giving her credit, and having done so he is released from all obligation. If the wife is not furnished by the husband with all necessary articles, any one may

furnish her with them, whether the husband forbids it or not, and have a valid action against him. But in order to do so he must be able to show affirmatively and clearly that the husband refused or neglected to provide her with necessaries suitable to her condition.

7. If a wife, having some property in her own name acquired before her marriage, dies, is her husband, who has property of his own, liable for the expenses of her last sickness and funeral? And if he refuses to pay them, can it be collected from her estate?

A. The husband is bound to furnish all necessaries to the wife, including medical attendance and burial, and her separate estate can not be charged with any of these expenses except with her consent.

8. If a man holds real estate in his own name does a wife also sign the mortgage?

A. A wife has a dower interest in the real estate of her husband, and this interest is good, ordinarily, against any one claiming under a deed or mortgage which she has not signed. But in some States if a husband executes a mortgage to secure a part of the purchase money to be paid upon the land, his widow will not be entitled to dower out of such land, as against the mortgagee or those claiming under him, even though she has not united in the mortgage. There is no advantage in having a deed to real estate made to both husband and wife.

9. A (husband) marries B (wife). The latter has a separate estate and she provides apartments and furniture at her own expense for their mutual use. Subsequently, without cause, the wife suddenly leaves her home and deserts her husband, without notice. The husband, after waiting several weeks for the return of his wife, and her failure to do so, packs up the goods and sends them away for storage in his name. Can the wife legally claim and recover from her husband the restoration of the property by a suit in replevin or otherwise?

A. It is held that "a wife who has left her husband without good cause, and is living separate and apart from him, may maintain an action of replevin against him to

recover articles of personal property belonging to her, which were left and remained in his house and possession."

10. A married woman abandons her husband, and subsequently the two enter into an agreement to live apart for no specified time and also waive conclusively all causes for action existing when the agreement was made. In the event of the death of the husband what interest would the wife have in his estate?

A. In such a case as our correspondent puts, the wife would have the same interest in her husband's property, upon his death, as if no such agreement as is described had been made between them, that is, she would take a life interest in one-third of his real estate and also an absolute title to at least one-third of his personal property. Her interest in the personalty might be larger than this, the matter depending to some extent upon the nearness of the other relatives surviving the husband. An agreement between a husband and wife fairly made will be enforced by the courts so far as it relates merely to their property interests; but a separation to be legally binding must have the sanction of a judicial determination.

11. Please give your opinion as to the validity and binding force of a contract made between a man and woman at the time of the marriage ceremony between them, and described as a consideration of the marriage, to the effect that neither party shall ever sue for an absolute divorce against the other. Can the statutory right be waived in this way?

A. The personal rights, duties and liabilities growing out of the marriage relation cannot be altered or affected by any ante-nuptial agreement. This is so because marriage itself is not a contract. The preliminary agreement is a contract, but the relation itself involves rights and duties emanating from a higher source than the mere agreement of the parties. The State determines under what conditions the relation may be dissolved, and no prior agreement of the parties can supersede the rules so established.

12. I built a house worth $2,500, which is in my wife's name. There is a mortgage on the house of $900. Lately I have run in debt to the grocer to the amount of $140. I have always understood

that the bill was in my name, although my wife and children generally made the purchases. The grocer having made an assignment the assignee threatens to sue my wife, and to levy on her house if the debt is not paid. Will you please let me know if my wife is responsible, and if assignee can attach the house?

A. If the purchases were made, as it appears, for the household of the husband, it makes no difference whether they were ordered by the husband himself or his wife or daughter, they cannot be charged against her separate estate and collected from her property.

13. A accepts a note from B, payable one day after date, with indorsement of B's wife, B's life being insured in her favor. Was it necessary for A to have the note protested to make the claim against B's wife valid, the note having been indorsed by her with a view to securing its payment from B's insurance in the event of his death?

A. One who signs as a mere indorser is not held unless the note is presented for payment when due, and notice sent of a failure to collect it. But if B's wife signs as a surety and this can be fully proved, she is held without such notice. The best way is to have her sign with her husband as co-maker, or to have her add "as surety" after her signature.

14. If a man who is insured dies, is his wife compelled to produce certificate of marriage and get copy if it is lost, or is her affidavit all that is necessary?

A. There is no statute compelling the production of a marriage certificate, or copy of it, to establish the identity of the wife mentioned in a policy of insurance. Whether the person claiming the insurance money is or is not the beneficiary named in the policy is a question of fact to be decided, like other questions of fact, by any evidence that will convince a jury.

15. A man dies leaving about $3,000 in cash and makes no will; he leaves a widow, a mother and brothers, but no children. How is his property distributed?

A. In many states, if there are no children or their descendants, the half of the money, after paying the debts due by the estate, goes to the widow. The mother and brothers each share equally in the other half of the property.

All other personal property belongs to the estate, and unless the heirs agree as to the distribution, must be sold by the administrator and the proceeds divided as above stated.

16. A young lady has $1,500, which she has deposited in a savings bank. She marries, has the account changed to her married name, and deposits until she has, say $2,500 or $3,000. She is taken sick and dies without issue, and leaves no will or disposition of her money; who is entitled to it, or who is her lawful heir, her husband, mother, brother or sisters (her father having died before her marriage)?

A. In some states, her husband surviving her will inherit one-third of her personal property. The remainder will go to her child, if she leaves one; or, failing such issue be equally divided between her mother, brothers and sisters. In some states the inheritance would be one-half.

17. Does a wife's right of dower hold in real estate acquired by the husband subsequent to an absolute decree of divorce in favor of the wife?

A. It was decided in the Supreme Court that a woman is not entitled to dower in the lands of which the husband became seized after she had obtained a divorce from him, and this decision is considered good law.

18. If a married man dies without leaving a will, having a wife but no children, brother, sister, nephew or niece, only cousins, what portion of the property does the widow receive, both personal and real?

A. If the deceased left no father or mother, his real estate, by the law of most States, would descend to the "persons of equal degree of consanguinity to the person so seized, as tenants in common, in equal parts, however remote from the person so seized the common degree of consanguinity may be." But the widow's right of dower remains, which is the use and benefit "for the term of her natural life, of the one full and equal third." The personal estate in the same case would go, half of it to the widow, and the residue would be "distributed equally to each of the next of kindred who are of equal degree, and those who represent them."

19. A widower with grown children and possessed of personal

and real estate that is valuable, marries a second wife but has no children by her. In the event of his death before hers, to what part of his estate is she legally entitled?

A. If he dies intestate the widow will inherit one-third of the personal property and will have her dower in the realty, which is a life interest in one-third of it if in New York State. In some states the inheritance is absolute to both personal and real property, and is not always confined to one-third. There is variation in the different state laws.

20. J. D. took out a ten payment policy for say $1,000, payable to M. D., his wife, on which the premiums have all been paid. She is now obtaining a divorce and is anxious to know whether the policy is absolutely her property in case she outlives him, and is assignable by her to her children in case she dies first, or whether he can have any power to make it payable to another wife in case he were to marry again.

A. The exact provisions of an insurance policy are important in determining a matter of this kind. It is held, however, that "where a wife is the sole beneficiary in a life insurance policy not in terms payable to the heirs of the husband, she retains her interest after a dissolution of the marriage as a part of her separate estate."

21. A man who had lived apart from his wife, and was believed by his associates to be a widower, died leaving a will in which no reference is made to a wife. But the will provides that half of his interest in certain property should go to his "heir or heirs at law." No blood relatives survived him. The widow is advised that she is not an "heir at law" and would not inherit under the will, but in order to get her rights must contest the will. The executor is advised that in this case the widow is the only heir at law, and by supporting the will would inherit the entire half interest referred to. Which is the correct view?

A. In construing a will it is always the aim of the courts to give effect to the intention of the testator so far as they can learn such intention from the language he has used. Though the words "heir" or "heir at law" do not ordinarily include a husband or wife, the courts would give them this meaning if the will showed clearly that this was the sense in which they were understood and used by the testator.

In the case put by our correspondent, however, there is no fact stated by him to show such an intention on the testator's part, and there is no reason to suppose that the courts will interpret the words, as used in this will, in any other than their usual sense. One court says: "In the case of real estate it is not true that the widow ever takes as heir, and that word will never embrace her unless there is other language associated with it showing that it was intended to embrace her."

22. A man gets married; saves a small fortune, and then dies. His widow marries again. In case of her death what claim would her second husband have to the property?

A. The second husband would have no interest in the property of the first husband, except in such portion thereof as the widow might receive by bequest or inheritance. After the first husband died his estate would be settled. What portion of his estate would go to his widow depends on his will, or if he died intestate, on the number and relation of the heirs entitled to share in his property. When the widow died, if she left no will, her second husband would have such interest in her estate, both personal and real, as the laws of the State where the property was located granted him. The laws vary in different states, some allowing the husband one-third, some one-half absolutely, and some allowing life use of the real property.

23. My wife owns some real estate which is mortgaged; can I pay off this mortgage so that at her death, if the property is willed to her relatives, I (her husband) can hold the mortgage against it? Could my wife will me or my heirs the amount of said mortgage in case I paid it off?

A. The wife could make a will giving the amount of the husband's advances to him if he survived her, but this would be no security, as women have been known to change their mind, and she might tear up that testament and write a new one. The best way is for the husband to buy up the mortgage (not pay it off, and discharge it of record) and take an assignment of it, holding it in his own name as a lien on the property.

24. A F does business under the firm name of M F (his wife's name). There is a balance of over $100 we cannot collect. How shall we proceed to recover our claim? How if A F owns real estate? A F is collector for a large concern and earning a big salary.

A. If the debt is against M F she may be sued and the execution can be satisfied out of the assets of the "business," if they are sufficient. But if the debt is against A F, the property of M F cannot be held for it. He may be sued, and when judgment is recovered, levy may be made upon his real estate and other property, if he has any. He is probably doing business in his wife's name, ostensibly acting as her agent, to protect the assets of the concern from execution to satisfy claims against him. It will be very difficult, unless he has property in his own name, to compel him to act honestly by his creditors. He cannot be held for her business debts, nor she for his.

25. If a married woman has real estate conveyed to her in her own personal right can she legally convey same to another party without the signature of her husband accompanying her signature in the deed? Her husband having been absent for twelve or fifteen years, his whereabouts being unknown and his signature being unobtainable, can she contract for the sale of the property and give a clear title to the purchaser?

A. A married woman who is possessed of real estate as her separate property, may bargain, sell and convey such property, and enter into any contract in reference to the same, with the like effect in all respects as if she were unmarried, and she may, in like manner, enter into such covenant or covenants for the title as are usual in conveyances of real estate, which covenants shall be obligatory to bind her separate property, in case the same or any of them be broken.

INDORSEMENTS.

(See also Endorsements and Checks, Drafts, etc.)

1. A person receives a long time note and sells the same at considerable loss; is he in any way responsible for the note having indorsed it, if the drawer fails to meet it at maturity?

A. The only way in which the indorser of a note can

avoid the responsibility of paying it if the maker is in default and he is duly notified, is to write above his signature the words, "without recourse to," or "without recourse in any event to," but it is evident that in the case described this would have prevented the sale of it. A man cannot indorse a note to give it a salable value by his guaranty, and when by the default of the principal he is called on to make the guaranty real, escape by saying he did not mean anything by his indorsement! He is held to mean that he would pay it if the maker failed to pay, and there is no escape from that responsibility.

2. A note made by J D drawn to the order of R R is indorsed "R R special." How would the word "special" affect the note?

A. If the word "special" can be regarded in any way as a limited or conditional indorsement, the maker might object to its sufficiency. But if it is merely a memorandum of the purpose or object of the indorsement, as "for private account," "charity," "for house rent," &c., it would not affect his liability. We do not see how it would limit the responsibility of the indorser.

3. What is the correct indorsement of a check drawn, "Pay to the order of John Smith for Mary Jones?"

A. It is sufficient to indorse "John Smith," as the words "for Mary Jones" are directory, or a memorandum of the use to which the money is to be applied. "Pay to the order of James Brown for coal," or "pay to the order of Henry Robinson for a bill of exchange," are samples in which the simple name of the payee was held to be sufficient indorsement.

4. In settlement of a long standing debt the debtor offers to furnish his note and to find a good, substantial indorser for it. The indorser was never informed that the note was taken on the strength of his indorsement and nothing was ever paid to him for his part in the transaction. Can he be held as indorser under such a state of things as this?

A. A surety can always be held upon his contract if there was a consideration for it; otherwise he cannot be held.

The consideration need not inure to the benefit of the surety. It is sufficient that the creditor has done or refrained from doing any act in consideration of the guaranty. If the surety puts his name upon the note before it is accepted by the creditor, the presence of the name will be presumed to be part of the consideration for the acceptance of the paper. But indorsing a note after it has been accepted by the creditor does not bind the indorser unless a consideration can be shown other than that which the note itself imports. In either case it is not necessary to tell the surety that the note is to be accepted in consideration of his indorsement.

5. A gives a check on bank to order of B, a corporation; when presented for payment the back of the check reads as follows: "Pay to the order of C, D president, by E attorney, for deposit to our credit in F. C (by its treasurer) F." Payment was refused because the bank was not satisfied that D, president, was the president of B. It was returned to F with a request for a guaranty to that effect, and it was again presented with the words written, "indorsement guaranteed;" it was again refused on the ground that such guaranty did not meet the point, the bank on which it was drawn demanding a guaranty that D, president, was president of B, the drawee.

1. Was the demand a reasonable one?
2. If D, president, should have misapplied the money, would B have any claim against the maker?
3. To what risk was the bank exposed that it should ask such a guaranty?

A. It is important that the drawee of a check that is payable to the order of a company or corporation should know that the person who signs for such institution is duly authorized. A man may sign as president, cashier, or attorney, but if he sustains none of these relations to the company, and has no authority from it to sign on its behalf, the indorsement is worthless, and the payment, if made to such order, is not a good payment. Thus far there is no dispute. But a check or draft is drawn to the order of the Jones Manufacturing Company; it is indorsed "Jones Manufacturing Company, John Smith, President," or "William Robinson, cashier," or "Peter Funk, attorney," and given to the 101st National Bank for collection. This bank affixes the usual

stamped indorsement and presents it for payment. Payment is refused because the drawee doesn't know that Smith is president, or that Robinson is cashier, or that Funk is attorney, and the collecting bank is asked to guaranty the unknown fact. Every indorser by his simple signature absolutely guarantees not only the genuineness but the sufficiency of all the previous indorsements. If the 101st National Bank is not in good credit the drawee may decline to pay on the strength of its assurances.

6. On the first day of November A gives B check for $500, B indorses the check and pays it to C, C holds the check until December 1. In the meantime A makes an assignment, and C then sends the check to the bank and the check is protested and sent back to C. Now does C lose the amount of the check, or is B obliged to take check back from C?

A. The indorsement of B only binds him to make the check good one full day after C has had an opportunity to present it. If it was drawn on a bank in the same place, and C did not present it the next day (at least) after he received it, he has no recourse to B, but must look wholly to A for his pay.

7. A draws a check making it payable to himself; he turns it over to B without his (A's) indorsement; B indorses the same and turns it over to C. C takes the check to the bank on which it is drawn and the bank stamps it "certified" and the cashier signs his name. Now can C compel the bank to pay the same before A, the maker, has indorsed it, although the bank certified to it without A's indorsement?

A. If A draws a check to his own order and himself takes it to the bank and has it certified, the certification is simply an agreement on the part of the bank that it will pay the check whenever it may be presented so indorsed as to show title in the person demanding payment. If A draws a check to his own order and delivers it, without his indorsement, to B, and B takes it to the bank and procures a certification of it and transfers it to C, then C is not in position to proceed upon the check as a negotiable instrument, but only as upon a non-negotiable instrument assigned to him by the owner. C holds the check, in other words, subject to

all the equities between the original parties. If he can procure its proper indorsement, after the certification, he may proceed upon it as in the case of any other negotiable instrument in the hands of a *bona fide* holder for value. If he demands payment and the check is not indorsed, the bank will be compelled to make payment unless it can show the existence of some equity between the parties at the time of the original issue and transfer of the paper which would have been a sufficient defense if suit had been brought simply upon the debt for which the check was given, or upon any paper in non-negotiable form. In the absence of such a defense the bank can be compelled to pay the check as if it had been properly indorsed. See 76-352; 107, 183, 349 N. Y.

8. A in Philadelphia draws upon B, of Florida, for $400, attaching to the draft a deed which is to be delivered only upon payment of the draft. Our Philadelphia correspondent sends the item to us and we forward it to the town in which B lives. Our correspondent there reports that the draft was duly paid by B, but before they could remit us a party brought suit against A and served a writ of garnishment upon the bank. We deny the right of the bank to answer that they owe A anything, as the $400 belongs to us, and they should have answered the writ by stating that they did not owe A anything and had no money in their bank belonging to A, and should have promptly remitted us the $400 less the cost of collection. Is our view of the case correct? Bear in mind that the indorsement upon the back of the check was as follows: "Pay to the order of any bank, banker or trust company. Previous indorsements guaranteed."

A. Legal title to this paper, and to its proceeds, was clearly in our correspondents, and the banker in the interior town should have answered as our correspondents suggest. The state of things shown by the bill itself and its indorsement is not to be negatived by the fact that it was forwarded in connection with a deed executed by the drawer of the bill. A bill of exchange drawn for any purpose, or growing out of any transaction, may be transferred before it is paid; and the unqualified indorsement in this case shows that such a transfer had been made. There may have been equities in the case under which the drawer of the bill could establish a good title, as against his immediate indorsee, but no evi-

dence of any such equity appears either on the face of the bill or in any statement in our correspondents' letter.

9. Kindly inform me whether the following is a good and safe way for endorsing checks sent to the bank for deposit: "For deposit, to the credit of" (name of firm). We are now indorsing checks in the following manner: "Pay to the order of the —— Bank" (name of firm).

A. If the depositor is willing that the bank shall take title to his deposited checks, to do with them as it chooses, the indorsement our correspondent is now using, "Pay to the order of the —— Bank" is suitable and effective. If it is intended that title shall not pass to the bank some restrictive indorsement must be used. "For this purpose the words, "For deposit," or "For deposit to the credit of ——," or "For collection," may be used. Of these various indorsements there are some reasons to prefer the latter, "For collection." When money is deposited in a bank it is well settled that the bank immediately becomes owner of it, the relation thereafter existing between it and the customer being merely that of debtor and creditor. In like manner some courts, but not all, hold that if a check is deposited and is indorsed "For deposit," such an indorsement is, in some cases, "more than a mere agency or authority to collect; it is a request and direction to deposit the sum to the credit of the customer, and gives to the bankers authority not only to collect, but to use the check in such manner as, in their judgment and discretion, having reference to the condition and necessities of their business, may make it most available in their possession." The indorsement under which title is least likely to be held transferred to the bank is "For collection."

INFANTS.

1. If bonds or certificates of stock, say of railroad companies, are put voluntarily in the name of a minor, can the said minor, before becoming of age, legally execute a transfer or assignment of said bonds or certificates, or sign a power of attorney, to have such transfer made, even by direction and authorization of the person who voluntarily had the securities so registered?

A. If the stock was put in the name of the minor while some other person collected and used the dividends, the courts would hold that the minor was simply a trustee of such other person. But if the stock was made absolutely the property of the minor, we think he could not make a transfer of it which would not be either void or voidable. The policy of the law of late years has been to restrict as far as possible the number of absolutely void acts on the part of a minor, to declare his acts merely voidable, and leave him to avoid them or not, as he may see fit on coming of age. Any power of attorney which the minor should sign would be open to the same objections that apply to a transfer of the property made directly by himself.

2. A minor purchased five shares of stock in a corporation organized under the laws of Virginia. The par value of the stock was $100 a share. He bought the stock from the secretary of the company at $65 a share, and certificates of the stock were duly issued to him. After two years had elapsed, the purchaser of the stock was told by the secretary of the corporation, of whom he had purchased the stock, that the company had dissolved and reorganized, and that his stock was worthless. The purchaser had received no notice of the dissolution or the reorganization, nor could he learn from the secretary the basis upon which the company had reorganized. Would the fact that the purchaser was a minor give him the right to rescind the purchase on coming of age?

A. If a minor has bought stock in a corporation, whether he has been swindled or not, but especially if he has been, he may repudiate the contract upon coming of age, return the stock certificate and demand the money paid for it. The contract is not absolutely void, but it is voidable at the option of the minor. If he delays any action in the matter for an unreasonable length of time after reaching his majority he will be held to have affirmed the contract; but if he repudiates it promptly and is in position to return the stock, he can compel the seller to repay the purchase price.

3. B dies, leaves a widow and two children (under 12); he leaves no estate, and the widow is only able by hard work to keep a roof over her head, but cannot educate and clothe the children as they should be in their station of life. B was an only child and his par-

ents are well off and able to assist the children. Now, under the laws can they (the grandparents) be compelled to assist the children?

A. Grandparents are not legally bound to support their grandchildren. There are some States where provisions are made to enforce care of poor relatives to prevent the town from caring for them, including the grandparents.

INHERITANCE.

1. A is an illegitimate child. His mother was married four years after his birth, and had three other children, and the husband was not the father of the illegitimate child. Ten months after the birth of that child his grandfather, on his mother's side, died leaving a valuable estate, which, after an interval of nearly twenty years, is just about to be closed. The mother meanwhile has also died. Is not the illegitimate child entitled to his pro rata share with the three other children to the interest which the mother had in the estate?

A. "Illegitimate children, in default of lawful issue, may inherit real and personal property from their mothers as if legitimate." If, therefore, this illegitimate son was the only descendant he would inherit; but his mother having had "lawful issue" still surviving he remains cut off.

2. My mother died and left in savings banks about $5,000, jewelry about $1,000. She left five children and a husband. The husband is a stepfather to the children. She had no children by this husband. To whom do the money and jewelry belong?

A. It is provided by law that upon the death intestate of a man, leaving a widow and one or more children or descendants, one-third of his personal property shall go to his widow, and the remaining two-thirds to the children or descendants. The husband of any deceased married woman shall be entitled to the same distributive share in the personal property of his wife to which a widow is entitled in the personal property of her husband, and no more. The children take two-thirds of all the personal property, share and share alike, and the husband of the deceased takes the other third. That he is a second husband and not the father of the children is of no consequence; he shares the property by reason of his relationship to the decedent.

3. To settle a dispute will you please say which is the nearer relation to a man, his niece, or his half sister? Should he die intestate, which would inherit, and is the law the same in Connecticut?

A. The laws of intestate succession prevailing, place brothers and sisters and their descendants, and half brothers and sisters and their descendants all upon the same footing as heirs. So the niece, sole descendant of a deceased brother or sister and the half sister would share alike.

INJUNCTIONS.

1. A and B represent two communities, both incorporated as parks for summer residences, and occupying adjoining lands and dependent upon the same mountain stream for their water supply. The water supply is taken from the stream and distributed through pipes. A built a dam, thus diverting B's supply. B made formal protest at the time, demanding his share of water flowing from the stream, which demand is entirely ignored. Please advise what redress B has.

A. When two owners have land lying along the same stream either may make any use of the water he pleases, provided his use is reasonable, and not wasteful, all the circumstances being taken into consideration. If the upper owner wishes to turn the stream into any sort of irregular course of wandering over his own land he may do so if he uses no more than a reasonable portion of the water and if he takes pains to turn the stream back into its natural channel at the place where it leaves his land. Each owner has a right to insist that the stream shall come upon his own land in practically the same condition as to height, amount of water, etc., as would be the case if it were subject only to natural laws and conditions, and that it shall leave his land and enter that of his neighbor below in its accustomed place and at its usual level. He may also have a mandatory injunction restraining his neighbor from continuing to divert the water, and compelling him to restore the stream to its natural channel. This is the remedy for B to seek.

2. A, in New York, purchases of B, in London, through his broker in New York, 500 boxes of dates, shipment to be made from London and the dates being described as "very good quality indeed." A places a credit in London through his bankers in New York. B

ships the dates from Antwerp. The invoice and papers arrive too late, and the dates go into warehouse under general orders. The invoice states two marks, but the dates are of various marks. A can not get proper examination where the dates are stored, but, with the broker, who acts as B's agent here, giving assurance that the matter will be properly adjusted, A pays duty and expenses and hauls the dates to his warehouse. The dates show so irregular in quality and condition that there appears to be fraud upon the part of the shippers in Antwerp. The broker cables B that A rejects the dates, asking a refund. B cables replying "unreasonable, etc." The broker wrote B the situation as to the appearance of the dates, etc. In the meantime some action should be taken. Can the bankers be enjoined to stop payment of the draft on account of fraud? What can A now do?

A. Whenever commercial paper has been obtained by any fraudulent or improper practice which renders an enforcement of the paper unconscionable, the maker is entitled to an injunction to stop payment to the original holder. He may also have an injunction to prevent the original holder from negotiating the paper. This latter right is at least as valuable as the other, often more so; for if the paper, before the injunction is served, should come into the hands of an innocent purchaser for value, without notice of the inadequacy or failure of the consideration, the maker would be absolutely prevented from asserting his defense at law. That is the consideration that makes the equitable remedy by injunction so important and valuable in a case of this kind.

3. A carpenter verbally agrees to do a certain job for $25; finishes the job and renders a bill for $50. The bill is disputed in writing and a month later a check for $25 is sent with a letter stating that the amount enclosed is in full. The check is used by the carpenter, but no other acknowledgment is made. He has sent his bill for the balance due monthly for several months past. As there is nothing actually due him, cannot he be stopped in his attempt at annoyance?

A. We find no provision of the statutes under which a person who thinks, however mistakenly, that money is due to him, can be prevented from simply mailing a bill for the amount once a month.

4. Our contract with the telephone company calls for a maximum number of calls for the year, which we have exceeded a considerable time before the ending of the twelve months, and since having reached

this maximum number, we are charged with all calls made at so much per call. We are keeping a memorandum of the number of calls made, and there is regularly a discrepancy between the number of calls noted by us and those charged by the company, the discrepancy being sometimes larger and sometimes smaller. In the last month it was quite considerable, the company charging us with about double the number of calls noted by us. Are we compelled to accept without question the statement of the company, or have we any redress? Is our memorandum of calls not to be considered as good as the company's, we being reasonably certain of same being very nearly correct, but allowing for some possible slight errors on both sides? Are we compelled to pay the company's bill and seek redress in court, or can we refuse payment of the bill until same is corrected?

A. A telephone company may of course take its instruments out of an office or a house if the customer refuses to pay, but that is not the question raised by our correspondent; here there is willingness and ability to pay, and the only question at issue has reference to the amount to be paid. When such an issue is raised in good faith the customer of the company is entitled to have it settled without any interference with his telephone service and without being compelled to pay anything before it is settled. Gas lighting companies being much older than telephone companies, questions of this kind have more frequently arisen involving the rights of the former, but the legal principles are precisely the same in both cases.

5. Is it a fact that a gas company, or an electric light company either, can make any charge it chooses and then shut off the light if the bill is not paid? Is there not some way in which the customer, where he is perfectly honest in disputing the bill, can keep his light while the courts are passing on the question?

A. The law simply gives to gas and electric light companies a right to shut off the gas or electricity from any person "who shall refuse to pay rent or remuneration due for the same." Before the company has any power at all under this statute there must be a certain amount of rent or remuneration actually earned by the company, due to it and unpaid. The company is not authorized to decide, in case of dispute, that it is in the right; that point is to be determined by the courts, as in the case of other disputed claims. If

any person who uses gas or electric light is satisfied that he is right in a dispute with the company, he may have an injunction, as a matter of course, to prevent any interference by the company with his supply of light until the matter can be presented to a court and determined upon its merits. In short, the company brings suit, just as any other creditor is compelled to do. If the company prevails it will recover its charges, with interest, and the costs of the suit, and it may then discontinue the service if the amount of the final judgment is not promptly paid.

6. Two years ago my father died, leaving two houses, partly encumbered, to five sons and one daughter, all of age, but left no will. My oldest brother, having a recorded judgment against him, induced us to sign over our shares to our sister to make him safe, as he thought, till these judgments expired in two years; but they were renewed by the parties again. My sister is about to seize the property and sell it. How can I go about to get my name off that paper, and what is the best way to put the whole affair in the court for settlement, and what court?

A. If real estate is turned over by the owners to any other person for a special purpose, and that person attempts to make any other use of it, this course may be prevented by an injunction sued out in any court of equity. The transfer to the present holder having been made in trust and without consideration, the trust may be annulled at any time and the real owners of the property may take it back into their own hands. This also may be accomplished through any court of equity.

INN-KEEPERS.

1. If I go into a public restaurant and sit down in a vacant chair, has the waiter a legal right to force me to leave that table, as he says it is "reserved"?

A. The keeper of the restaurant has a legal right to request his customers to take whatever place he chooses to assign to them, and they must accept such appointment or leave the premises unserved.

2. I left in a hotel in New York city several months ago a handbag checked in the check room, and when I called for it a few days

ago it could not be found. Is the hotel responsible for the loss, and to what amount?

A. An inn-keeper or hotel-keeper is liable to a guest, but usually to no one else, for baggage left in the care of the inn-keeper himself or any of his agents while the owner of the baggage was a guest. The keeper of the house is not bound, under the strict common law rule, for the property of any person except one who is actually a guest, or one who is soon to be a guest and has sent his baggage on a short time in advance, or one who has been a guest and has left his baggage at the hotel, with the consent of the landlord, for a short time after his own departure. The lability, in any case, is only for baggage, properly so-called, that is, for such articles of personal use as a traveler needs, and as that particular traveler actually used, or intended to use, for his own personal comfort. If property is left by one who is not a guest, or has not recently been, or is not soon to be a guest, the landlord is not liable at all, where the property was left in his personal charge, unless he knowingly permits his employes to accept the custody of such property; if such permission has not been granted, the employe, in taking charge of the property, is acting upon his own responsibility, and not as an employe of the house, and he must be looked to alone. If the landlord allows his employes to take charge of the property of those who are not guests of the house he is liable only in case the loss can be traced to his negligence or misconduct, or that of some of his servants or employes.

3. If a guest of a hotel deposits money with the proprietor, and he fails to pay over the money, in what way would he be amenable, and what is the statute relating to same?

A. If a guest deposits money with a hotel-keeper, and the money is not returned on demand, it may be recovered by suit, as it might be from any other person with whom it had been deposited. If the hotel-keeper makes no reasonable claim of a lien upon the money, if he has not lost it, if, in short, he is attempting to deprive the owner of it for his own benefit, without excuse or warrant of law, he is guilty of larceny.

INSOLVENCY.

(See also Bankruptcy.)

1. A, of New York, draws a bill at sixty days sight on B, of London, which B accepts. Before maturity of bill B fails and subsequently goes through the English bankruptcy courts. B then having very rich and influential friends here, decides to start in business here. Does the English bankruptcy proceeding release B from his obligation under his acceptance to C, the American holder of the protested draft?

A. Foreign bankrupt laws and the insolvency laws of the States of this Union have no force except in the one where proceedings take place. A discharge under a foreign law or that of any sister State is no defense in the courts of another State to an action by a creditor, unless he was a subject or a domiciled resident within the jurisdiction granting the discharge at the time it was granted, or unless he became a party to the proceedings or accepted a dividend under them. In the case here put B is not released from his legal obligation to C by reason of the English bankruptcy proceedings.

2. There is a claim that the National Bankruptcy Law is better than State insolvency laws. What is the difference?

A. There are no statistics to show what percentage of the claims of creditors was formerly secured to them under the insolvency laws of the various States. In many jurisdictions the debtor simply made an assignment of his property for the benefit of his creditors, and the assignee realized as much as possible from the sale of the property and distributed it. The matter did not come formally before any court and there was no public officer whose duty it was to look after assignments and to keep any record of them or statistics concerning them. The principal advantage that a national bankruptcy law has over a State insolvency law arises from the fact that the former is in force all over the country while the latter has no validity beyond the boundaries of a single State. If an assignment is made under a State law no person living in another State can be compelled to

give evidence with regard to the matter, to accept a dividend under the assignment and release the debtor, or to be bound in any way by the assignment. The debtor may get a release from all claims in the hands of inhabitants of his own State, but he is still liable for whatever he may owe to those living beyond its borders.

INSTALLMENTS.

1. A purchased a piano from B for $500; he paid $50 on signing the contract and the balance was to be paid in monthly installments. After A has the piano in his possession he notifies B that he would like to know if he will take back the piano. B removes the piano before the first installment is due. Can A demand the $50 paid?

A. The respective rights of A and B in this case depend altogether upon the terms of their contract. The seller of the piano had no right to take it back before the first installment fell due, except with the full consent of the buyer, and he seems to have had such consent. If the contract gives him a right to take the article back in this way, and still retain the amount already paid upon it, he is justified in doing so; but the authorization must be express and unequivocal. There has been no breach of the contract, and he cannot justify his act by any clause in the contract giving him this remedy for a default on the part of the buyer. The seller must point out some provision of the contract expressly giving him authority to take away the piano and retain the $50 whenever the buyer may ask him if he would be willing to take the piano back; failing in this, he may be compelled to return the $50 paid when the contract was entered into.

INSURANCE.

GENERAL.

1. A man goes to Europe with his wife and all his children. They all perish on the way over. Who collects the insurance in favor of the wife, her heirs or the heirs of her husband?

A. It is held that in the case of persons who perish by a common disaster, there is no presumption in law of survivor-

ship. In the absence of evidence the fact is assumed to be not ascertainable, and property rights are disposed of as if the death of all had occurred at the same time. This is not because there is a presumption of simultaneous death, but because there is no evidence or presumption to the contrary. If the insurance was payable to the wife absolutely, so that title to it had vested in her, the title is now in her heirs. If it was payable to her only in case she survived her husband, her heirs have nothing upon which to found a claim.

2. When an assured leases property from a railroad company and gives it an agreement not to give subrogation to the companies insuring his stock, and does not give notice of this waiver of subrogation to the companies, does he invalidate his policy by making this agreement with the railroad company and not putting the insurance companies on notice of this condition?

A. An insurance company paying a loss has a right to be subrogated to any valid claim which the insured may have against the person or corporation causing the loss. This right is sometimes expressly confirmed by the policy; but the insurer has it whether it is so provided in the policy or not. It is a right founded on the equities of the case.

3. Is a company reinsuring another company which has become insolvent and unable to pay its losses liable to the said insolvent company for its proportion of any loss, even though the insolvent company be unable to pay its assured?

A. It is held by the courts that the liability of a reinsurer is in no way affected by the insolvency of the reinsured. In fact, as one of the courts has said, to hold that the reinsurer was released or its liability in any way lessened by the insolvency of the company reinsured "would in substance subvert the whole contract of reinsurance as hitherto understood."

4. I sent goods to California. The shippers made the insurance for me, and I expected to receive a scrip dividend, but the shippers claimed it. Have I no right to it?

A. Custom gives the agent the right to retain the scrip, but the law has decided that the man for whom the insurance is made is entitled to it, if he chooses to demand it.

5. When does the liability cease of the party who takes out a policy (without signing any papers) in a co-operative or mutual fire insurance company?

A. In order to decide as to the obligation of the holder of a policy in a mutual company, in any particular case, it is necessary to examine carefully the charter of the company, if it operates under a special charter, and also the precise terms of the contract of insurance. It is well settled that the insured may, in some cases, be liable for debts arising against the company after the expiration of his own policy.

6. According to the conditions of our open policy, goods we are shipping to New York are covered by the underwriter as far as New York only; said goods have to be transshipped from there to, say, Philadelphia, either by rail or boat. Is it, in such a case, necessary to insure the goods anew or is the liability of the carrier (rail or boat) a sufficient security in case of damage or total loss?

A. Under such bills of lading as carriers commonly issue there are many causes of damage or destruction for which the carrier cannot be held. If an insurer will undertake to become liable in those cases insurance would be of advantage to the owner of the goods.

7. When a fire insurance company fails and goes into the hands of a receiver are unearned premiums on policies in force a preferred claim?

A. We do not find that a right to demand a return of unearned premiums in case of the bankruptcy of an insurance company constitutes a debt having priority under the law. Debts having such priority are described in Section 64b of the Bankruptcy Act, as amended. The chief headings under which they fall are expenses of preserving the estate, fees and costs incurred, directly or indirectly, in the bankruptcy proceedings, wages, and, finally, "debts owing to any person who by the laws of the States or the United States is entitled to priority." Unearned premiums would fall under this latter heading if they were entitled to priority at all; and we can find no provision, either in the statutes of the United States or in those of New York, under which policyholders

are entitled to claim a preference for their right to a return of unearned premiums.

8. Does a "cash on arrival" purchase contemplate that insurance against damage in transit shall be effected by the seller or the buyer?

A. When goods are sold for "cash on arrival," and there is no other provision in the contract leading to a different conclusion, the result is that the goods remain the property of the seller until they arrive and are ready to be delivered in good condition. In other words, payment and delivery of the goods with transfer of title are to occur at the same time unless the contract provides either that the buyer is to have credit, or that he is to pay for the goods in advance of the transfer of title. If the goods do not arrive the cash is not to be paid; neither is it to be paid unless they arrive in good and deliverable condition. It follows that the seller is to insure the goods if he wishes to be protected during their transportation. If he cannot require the purchaser to accept and pay for them except on arrival in good condition it is to the seller's interest to see that he is protected against the possibility of their destruction or damage at any time before he is to be in a position to turn them over to the buyer and get his money for them in accordance with the terms of the contract. Such an agreement contemplates that insurance against damage in transit shall be effected by the seller.

9. I hold policies for either life or fire for which I usually pay my insurance broker, taking it for granted that he settles with the respective companies, as I receive the receipts from the companies where I am insured through my broker. Now, supposing this broker does not pay the companies and something should happen, can the companies legally refuse to pay the policies on the ground of not having received the money from the broker?

A. The payment to a broker of a premium on a policy of insurance is not a good payment to the company, provided the broker pockets the sum and does not pay it over. If the underwriter demands the premium of the insured he can be made to pay it, although he has already given it to the

broker, and if the insured refuses to pay at this demand the policy upon due notice may be cancelled. But up to the time of such notice and cancellation the policy is binding, the law interpreting the contract as one on which the insured has been granted a credit for the premium and this contract therefore can be enforced until the credit is terminated by a demand for payment and its refusal. Then the company may give notice of cancellation, and its liability ceases.

10. A check in payment of an insurance premium is drawn in favor of the company and handed the agent of the company in a distant town, where the risk is located; has such agent the right to indorse the check and deposit same to his own credit in his local bank, unless duly authorized so to indorse by the terms of his agency commission, or otherwise?

A. The insured has fully protected himself when he has drawn his check for the premium to the order of the company which has issued the policy. The question of the right of the agent to indorse and use the check is one of fact. If the company has authorized the agent to make such indorsement, then it is bound by it, and the bank which pays a check thus indorsed is protected. If it cannot be shown that the agent had any such authority, then the bank on which the check is drawn cannot charge the check thus indorsed to the drawer's account. It can go back on the bank from which it received it, and each one in turn has a like recourse until the bank is reached in which the agent deposited the check to his own credit. That bank must make it good, and collect it, if it can, of the agent, or lose the amount.

ACCIDENT.

11. An accident and sickness policy issued by one of the very prominent accident insurance companies provides, among other things, that "no claim shall be valid unless written notice is given to the said company within ten days from the date of any accident and injury." Can this forfeiture be enforced in a case where, under the following circumstances, notice was not given until a month and two days after the accident? The policyholder never thought of his accident insurance until after he had recovered, and none of his family or friends knew of the existence of the policy. During the larger portion of this time the policyholder was suffering from the result of the accident

to such an extent that he could not get to his office where he kept his policy. Not having read his policy until his return to business, he did not know of the requirement as regards notice. Notice was given the company within a few days afterwards.

A. Such provisions in an insurance policy as our correspondent quotes are always construed by the courts as leniently as possible in favor of the insured; they are a valid part of the contract, however, and are to be enforced in the absence of any reasonable ground for ignoring them. If the insured is unconscious for some time after the accident that time will not be counted against him. If the accident makes it in any way impossible for him to give the notice, and there is no other person upon whom he can rely to do so, it is probable that the time during which this condition of things continues would not be held to be part of the ten days. We are of opinion that the insured cannot recover, in the case here put, unless he can show that he gave the notice within the ten days of the time when it first became possible for him to do so by the exercise of reasonable diligence, all the facts of the case being duly considered.

BURGLARY.

12. I am insured against burglary and a little while ago my coachman was robbed in the stable of his overcoat and another coat. The door of the barn was closed with a padlock and no doubt had been opened with a key that fitted it, or with a "jimmy," but no signs could be found on the padlock. I submitted a claim to the company, and their answer is as follows: "Our inspector learns that access to the stable was gained by the use of a duplicate key, no visible evidence being shown of a forcible entrance, and, furthermore, he learned that these articles belonged to one of your servants, and not to yourself. Under these circumstances we are not liable. In the first instance, as you hold a burglary policy and not a theft policy, visible evidence must be shown of a forced entrance; and, secondly, does not cover articles belonging to a servant." The policy reads, under schedule No. 3, "the building is a private residence and stable," and the form reads as follows:

"For direct loss by burglary of any of the property described in the schedule hereinafter given and stated to be insured hereunder, occasioned by its felonious abstraction from the interior of the house, building, apartment or rooms actually occupied by the assured, and described in said schedule and hereinafter called the premises, by any

person or persons except the assured, who has made forcible and violent entry upon the premises or exit therefrom, of which force and violence there shall be visible evidence; and for direct loss by damage to said property and to the said premises caused by burglars.

"Special Agreements.

"A.—The company shall not be liable for loss or damage: (1) If the property does not belong to the assured, or any relative of the assured by consanguinity or by marriage, or any guest, or any person, with the exception of domestic servants or employes, actually residing in the premises insured who does not pay board or rent." Please let me know if I am covered or not?

A. We have not found any decisions of the courts covering the precise points raised by our correspondent, but the contention of the company appears to be sound in one of its branches, if not in both. It is expressly provided that the company is to be liable only when there has been "forcible and violent entry upon the premises or exit therefrom, of which force and violence there shall be visible evidence." The only fact susceptible of proof, in this case, is that there has been an unauthorized entry upon the premises. There is nothing to show that it was "a forcible and violent entry," and, especially, there is no visible evidence of such force and violence. The policyholder has expressly undertaken to show these things, in order to recover, and they cannot be shown in this case. In that part of the policy quoted by our correspondent there is nothing which purports to state affirmatively just whose property is to be protected. We are told in what cases the company shall not be liable, but are left to a mere inference as to those in which it does assume liability. If we are to suppose the company to be bound in all cases except those in which this paragraph says it shall not be bound, then its policy does not appear to cover property belonging to an employe of the insured. Read in this way the policy provides that the company shall be liable if the property does belong to "any person, with the exception of domestic servants or employes, actually residing in the premises," etc. It is very clear that domestic servants and employes are here put in a different class from the assured himself, his relatives and guests. Property belonging to these

latter is covered, but servants and employes are expressly introduced as an exception to the rule.

FIRE.

13. A condition of the standard fire insurance policy of New York, as stated in lines 11, 13 and 14, reads as follows, viz.:

"This entire policy * * * shall be void * * * if the subject of insurance be a manufacturing establishment and * * * cease to be operated for more than ten consecutive days."

Please inform us what construction the courts have put upon this condition. If a manufacturing establishment is regularly engaged in the purchase and sale of goods and materials, but is temporarily shut down by reason of fire, flood, strike or similar cause, does it cease to be operative?

A. Provisions like that quoted by our correspondent have been passed upon by the courts in a large number of cases, but no one of the opinions can be relied upon in any new case unless all the facts are taken into consideration. Some of the decisions have been as follows: "A mere temporary suspension of business for purposes of repairing or from want of supply of materials is not ceasing to operate the establishment." "The ceasing to perform any one thing of many required to be done in the operation of the mill would not be to cease to operate it within the words 'cease to be operated' in the policy. The suspension of all work, caused by the difficulty in procuring certain cotton, is but a temporary suspension, and is not a ceasing to operate the mill." "Neither the previous habit of a person insured to cease the operation of his shoe factory during the dull season, nor the general custom of other manufacturers to do the same thing, can render nugatory a provision in his policy that it shall be void if the factory ceases."

14. If a family leave a house for say a month's vacation, and during that period two servants remain in charge of the house, living and sleeping therein, would that constitute unoccupancy? In other words, would the servants be considered as part of the family under the policy?

A. "Occupancy," as the word is used in fire insurance policies, has been defined by the courts of many States in the following terms: "For a dwelling house to be occupied,

within the meaning of an insurance policy, it must be used by human beings as their customary place of abode." The house described seems to have been occupied continuously.

15. A, a merchant, orders B, a broker, to procure for him $100,000 fire insurance at regular tariff rates. B obtains the required amount divided among several companies. For reasons best known to B he wishes to collect the amount of the premiums and calls upon A the day after the delivery of the policies and requests payment thereof. A refuses to pay. Has B a legal right to demand payment of premiums on or any time after delivery of the policies and in case of refusal, has he a cause of action against A?

A. When a property is insured through a broker the principals to the contract are the insurers and the owner of the property. The broker is a mere agent of the insured and is declared to be such by the policy itself. Any payment of premium that is mutually satisfactory to the two principals is sufficient in law. Payment to the broker will not bind the company unless the money actually reaches the company, and for this reason, among others, the broker is not entitled to insist upon any other terms of payment than those which are satisfactory to the company itself.

16. As I understand it, the broker or agent has from thirty to sixty days in which to pay the premium on a fire insurance policy. Now, suppose the property insured should be destroyed by fire in the interim, is the insured protected?

A. The courts have frequently answered the precise question put by our correspondent, holding that if a policy is issued and accepted the property is protected from that time whether the premium is paid or the insured or his broker is allowed to remain debtor for the amount.

17. The owner of personal property damaged by fire did not know of the existence of a policy of insurance on the property until a year and a half after the fire, the policy having been procured by the husband of the owner, who had not mentioned his action at any time, neither at the time of the issuance of the policy nor at the time of the fire. As soon as the owner discovered the existence of the policy she notified the company of the facts, and liability being denied, she furnished proof of loss in due form, stating in the proofs the rea-

son they were not made within the time provided by the terms of the policy. Can the assured recover of the company?

A. Fire insurance policies usually provide that notice of a loss shall be given within a certain number of days, or "forthwith," or "immediately." Sometimes it is provided (but not always) that no recovery shall be had unless such notice is given as the policy demands; if there is no such provision as this, of course, delay in reporting the loss is not necessarily fatal. The standard policy of N. Y. State provides that immediate notice shall be given, and that no suit for recovery shall be sustainable at law or in equity unless this and certain other requirements are complied with, nor in any case, "unless commenced within twelve months next after the fire."

18. A carries a stock of merchandise of the cash value of $10,000, and insures it under the 80 per cent co-insurance clause for $8,000. A slip attached to his policy states: "In case of loss the company pays that proportion which the amount of this policy bears to 80 per cent of the cash value of property destroyed." If the loss be total the company, of course, will pay $8,000, and the insured lose $2,000. But if it be a partial loss of, say $5,000, is the company obliged to pay $5,000, or, according to the contract, 80 per cent thereof, $4,000?

A. The 80 per cent. co-insurance clause is of no effect in such a case as our correspondent puts; it becomes effective only when the insurance is less than 80 per cent. of the value of the property and there is a partial loss. To apply the provisions of the clause to the case supposed by our correspondent leaves the matter just where it would be if the policy had been issued without such a clause. On a partial loss, amounting to $5,000, the company will pay the whole $5,000; that is in accordance with the contract. Now, the proportion which the amount of this policy bears to 80 per cent of the value of the property is 100 per cent; that is, the policy is for 80 per cent of the value of the property, and the proportion which 80 per cent bears to 80 per cent is 100 per cent or the whole, and the company, in such a case, would pay the whole of any partial loss.

19. A person gives a bond and mortgage on real estate and

retains the policy of insurance. The house burns down of which the mortgagee is ignorant and the mortgagor receives and retains the insurance money. Is this act an offense against the law, either civil or criminal?

A. If the mortgage contained a covenant by which the mortgagor bound himself to keep the property insured for the benefit of the mortgagee, he is bound by this covenant as by any other, and may be compelled to use the insurance money to put the building in as good repair as when the mortgage was made. In the absence of such a covenant the mortgagee's relation to the insurance money is the same as that of any other creditor. The mortgagor is not criminally liable unless he obtained the money through fraud or misrepresentation.

20. Is a fire insurance company of one State licensed to transact business in another State, to insure automobiles against loss by whatever cause, subject to the fire department tax of 2 per cent on premiums,—such insurance being procured by a resident agent for the owner of an automobile within the corporate limits of a village in that State, the same as any foreign company's fire business?

A. We do not know of a case in which this question has come before the courts. The courts would probably hold, if the question were raised, that the company is liable to the assessment. Where statute provides there shall be paid to the fire department "the sum of $2 upon the $100, and at that rate upon the amount of all premiums which * * * shall have been received * * * for any insurance effected or procured * * * against loss or injury by fire." If property is insured "against loss by whatever cause" it is clearly insured against loss by fire; moreover, the insurer himself would probably not deny that the policy in this case was intended to cover a loss by fire. If the company can show by an itemized list or by any means whatever what part of the premium is intended to cover the fire risk, it will be entitled to relief from the assessment on all other parts; but it probably will not be allowed to escape the tax on fire premiums by making the same policy include risks the premiums on which are not taxed.

21. What is the construction of the following statute:

"Cancellation of policies by receiver and issue of certificates of indebtedness:

"The receiver of any domestic fire insurance corporation on the receipt by him of any policy of the corporation in force, and upon the written request of the policyholder, shall cancel such policy and issue in lieu thereof a certificate of indebtedness as such receiver to the policyholder for the amount of the premium paid less the proportion of premium for the expired time of the full term for which the policy has been issued or renewed, and upon the receipt of such certificate by the policyholder the policy shall become null and void, notwithstanding anything in the policy to the contrary. The receiver, in his report of the liabilities of the corporation to the insurance department, shall state the total amount of such outstanding certificates of indebtedness not cancelled at the date of the report."

A. We are of opinion that an adjudication of insolvency of a fire insurance company, or the appointment of a receiver for such a company, operates, in and of itself, as a cancellation of outstanding policies. The authors of text-books (Joyce and Cooley, among others) take this view of the matter. Besides, this is only a branch of the general principle applicable to all insolvent corporations.

22. A sends B certain merchandise "to be paid for when sold." The goods lie in B's store for some months, he making returns and remittances to A as he sells the merchandise, until a fire breaks out in B's warehouse and the merchandise is destroyed. There has been no insurance effected, either by A or B, A considering that it was B's duty to insure. Is not B responsible to A for the value of the goods destroyed?

A. We think that B should have kept the goods insured; but whether his failure to do so makes him liable for the value of the goods destroyed is not so easily settled. In the case above cited if the goods were actually sold to the holder, the terms of sale being that he was to pay for them when he resold them, he is more than a bailee, and must pay for the goods destroyed.

23. A firm whose business it is to finish goods sent to them by their customers for that purpose carry fire insurance under the following form: "On merchandise, their own or held by them in trust, or on commission, or sold but not delivered or removed, or the property

of others for which the assured may be liable in case of loss or damage by fire, while contained, etc." Please inform us whether the words "for which they may be liable" imply a "legal liability" towards the owners of the goods on the part of the assured, or whether the assured can assume a liability of his own free will, and thus make the insurance companies liable in turn in case of loss.

A. In a case of this kind the courts hold that any goods are protected for the safety of which the policyholder is liable, whether the liability is one imposed by law or one assumed by contract, and, in the latter case, whether the contract is written or verbal.

24. Where the New York standard mortgagee clause is used and the premium is not paid when due, is not the mortgagee liable for the premium earned?

A. When a mortgagor has agreed to keep the premises insured for the benefit of the mortgagee, and has taken out a policy in pursuance of that agreement, the mortgagee is not liable for the premium simply because he is a mortgagee. There are various conditions under which he may become liable, however. Thus, where a mortgage slip is attached to the policy which provides that the mortgagee shall be liable on demand for the premium in case the mortgagor does not pay it, the payment of such premium is not optional with the mortgagee, but he is legally liable therefor in case of the mortgagor's failure to pay. It is in this manner that the mortgagee becomes liable under the slip attached to the New York standard form. It is therein provided that "in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same." This clause, strictly construed, makes the mortgagee liable for the premium from the date of the attachment of the mortgage clause, if the mortgagor does not pay it, though the policy has been in force for some time before the clause is attached.

25. A gives B a mortgage on a dwelling and takes out an insurance policy on the same, providing that loss, if any, is payable to B. Subsequently, A gives C a second mortgage on the property, without the knowledge or consent of B. It is contended that this action on the

part of A invalidates the insurance policy, that in case of loss by fire B, though not aware of the second mortgage, cannot recover from the insurance company. Is this law?

A. Whether the insurance policy in this case is invalidated by the making of a second mortgage depends upon the terms of the policy itself, and of any other agreement that may exist between the insurer and insured. It is usual for policies to contain a clause like that in the standard policy of N. Y. State, invalidating the agreement in case "any change, other than by the death of an insured, take place in the interest, title or possession of the subject of insurance (except change of occupants, without increase of hazard), whether by legal process or judgment, or by voluntary act of the insured, or otherwise." If the mortgagee, by an indorsement upon the policy, simply stands in the position of the insured, without any stipulation for protection against the acts of the latter, his rights under the policy may be defeated by any act of the owner of the premises violating a provision of the insurance agreement; in this case the mortgagee can recover only where the insured could recover.

26. A has a house worth $5,000; it is insured for $4,000; it has a mortgage on it for $2,000. The insurance company has notice of said mortgage, but no part of the policy is made payable to the mortgagee. A fire totally destroys the house; for what amount is the insurance company liable to the assured?

A. Either the mortgagor or the mortgagee may insure the mortgaged premises for his own exclusive benefit. If the mortgage provides, as it very often does, that the mortgagor shall keep the property insured for the benefit of the mortgagee, and he takes out a policy of insurance in his own name, which is not assigned to the mortgagee or made payable to him, the mortgagee, by virtue of the covenant in the mortgage, has an equitable lien upon the proceeds of the policy. But if there is no covenant or agreement in the mortgage that the property shall be insured for the benefit of the mortgagee, the mere fact that his mortgage covers the property insured, the insurer being personally liable for the debt, does not give the mortgagee any claim upon the policy

or its proceeds. The policy is a personal contract; it does not attach to the mortgage or the realty, and the claim of the mortgagee is no better than that of any other creditor of the mortgagor.

27. An insurance policy on merchandise is issued to say John Jones assured, loss, if any, payable to Samuel Smith, he holding a chattel mortgage on above merchandise. The question is: Is it necessary to have the word mortgagee follow Samuel Smith?

A. An insurance policy under which the loss is made payable to S. Smith is not invalidated by the mere fact that the word "mortgagee" is not appended as descriptive of Smith's interest. If a company has agreed to pay the loss to a certain person named in the policy, that person, if he can show an interest in the property, and if the company is liable to any one, is entitled to recover upon the express promise of the company to pay the loss to him.

28. A sells to B a parcel of dutiable goods, afloat, or for shipment, at so much per pound landed, duty paid. Presuming the Custom House permit is placed on board before the goods are discharged, does the buyer's wharf risk against fire and other causes commence as soon as they are landed, although not weighed by the Custom House weigher, and therefore not deliverable, but from no fault of the seller?

A. If the buyer has received the permit, or there has been any other form of constructive delivery, his insurance will apply.

29. A insures his stock for $75,000 in several companies; a fire occurs and destroys $50,000 worth of the same, what amount ought the insurance companies to pay A for his loss?

A. If the policy is in the ordinary form (and does not contain the co-insurance clause) A is entitled to recover $50,000, each underwriter paying his proportion.

30. We had a dwelling insured for $1,000 for five years; it was destroyed by fire, and the agents of the company decline to pay any of the insurance on the ground that the house had been unoccupied for more than ten days. Can the company do so lawfully, and has there been any decision on this point?

A. It is competent for an insurer and insured to agree

upon a policy which shall be void in case the building is left unoccupied, and the courts will enforce such an agreement.

31. An electric wire has been carried under my awning to my next door neighbor, this being done without my consent. In fact I did not know it was there until my attention was called to it by an insurance agent, who tells me that in case of fire, whether caused by the wire or not, I would be unable to collect any of my insurance unless permission for running the wire under the awning was stated in the policy.

A. The insured have the privilege of using electric lights provided the entire equipment is in full compliance with the standard of the Board of Fire Underwriters, and a certificate of this fact is obtained. No alterations in the equipment can then be made without the consent of the Board. The policy he holds becomes void if the hazard be increased by any means within the knowledge or control of the insured, unless the consent of the company issuing it is indorsed thereon.

32. We are receiving goods by ship delivered on Brooklyn wharves, and when not sold on the wharf are stored in Brooklyn warehouses. Our fire insurance policies read "Insured on wharf and in transit to and in store." When these goods are sold do our policies cover while on the dock in transit from store to buyer's lighter?

A. The policy we think would be held to apply to goods on the wharf only as they are there to go into store, and not when they come out again to be taken away.

33. A holds a fire policy insuring certain property. "Loss, if any, payable to B as his interest may appear," is a part of the written portion. Query—Where does the right and power of cancellation lie on the part of the insured?

A. It is usual for fire policies to bear upon their face the conditions upon which they may be cancelled. The right of cancellation is usually given, under certain conditions, either to the insurer or the insured, and to no other person. In fact, we do not know of any company which issues policies not setting forth the conditions under which they may be cancelled, nor of any company which allows its policies to be cancelled except by itself or the insured. If the policy

described by our correspondent was of this kind, all persons in interest would be bound by its stipulations, and the payee could neither cancel it nor prevent its being cancelled by A.

34. I insure a building for $10,000. There is a fire in which about $2,500 damage is done. I want to repair same but the building inspector will not permit me to do so and insists upon condemning the whole building as being unsafe on account of the fire. Will the insurance company have to pay me the whole amount ($10,000) or only the amount of actual loss by fire?

A. So far as we can ascertain, this precise question does not seem ever to have been brought before the courts except in a few of the States, and the decision has always been in favor of the assured. When the contract is made both the assured and the insurer know what authority building inspectors and other municipal officers have with regard to such matters, and the policy is issued subject to all risks arising from this cause.

35. A owns a factory building occupied by B for the manufacture of pianos and other wood working. He is about completing a new building of construction similar to the original factory building, which when completed will likewise be occupied by the same tenant and for the same class of business, manufacturing of pianos. The building is independent of the old building, except that there are openings in the walls between the buildings which have been closed by double batten doors. He has policies of insurance effected to cover a period of thirty-six months, one-half of which period has been consumed. Under the conditions of the standard form of policy (lines 11 to 30) is it necessary for A to pay additional premiums for the erection of such new building, or would a simple notification by letter or registered mail to each one of the interested insurance companies, informing them that a new building had been constructed adjoining the old building occupied by the same tenant for the same purpose as the old building, be sufficient to comply with the language of the policy?

A. The courts hold that the erection of a new building near one already insured may be such a palpable increase of the risk that the court itself will declare the policy void when it contains a provision avoiding it in case of increased hazard. When there is any doubt in the matter it is to be left to the jury to say, whether, in view of all the facts of the case, the

new building does actually increase the risk; and upon this decision of the jury the controversy must be determined.

36. There is a large fire and the officials of the city order a building which is insured and not on fire to be blown up to prevent the conflagration spreading; can the owner recover from the insurance company under his fire policy, or would a right of action accrue against the city, and could he elect which he would hold responsible?

A. It is provided by statute in Virginia that the chief fire officer on the ground may direct "the pulling down or destroying of any fence, house or other thing which he may judge necessary to be pulled down or destroyed, to prevent the further spreading of the fire;" that the owner of such property shall be entitled to recover from the city or town the amount of "actual damage which he may have sustained by reason of the same having been pulled down or destroyed;" but that he shall not recover for property which would have been destroyed by the fire "if the same had not been pulled down or destroyed under such direction, but only for what could have been saved with ordinary care and diligence, had no such direction been given." If the proof shows that the building would have burned if it had not been blown up or pulled down, then, according to the weight of authority, the insurer is liable unless such a contingency is named in the policy as one which releases the insurer.

37. A person owns a lot worth $3,000, on which he has a house worth $4,000, total value $7,000. A bank holds a mortgage on the property for 50 per cent of its value, or $3,500. The house is insured for its full value, $4,000, the policy containing the usual mortgagee clause, with the words "as his interest may appear."

1. In case of loss by fire is the mortgagee entitled to receive the full amount of the indemnity, or only such proportion as his interest in the house bears to its full value?

2. Is not the amount of the mortgage reduced by so much as is paid the mortgagee on account of the loss?

A. 1. Payment to the mortgagee "as his interest may appear" does not mean "in proportion to his interest," but "to the full extent to which he can show his interest to go."

In the case our correspondent puts the mortgagee is entitled to the full amount of his mortgage, $3,500, out of the insurance money.

2. The payment to the mortgagee extinguishes his debt, or reduces it by the full amount of the payment. Sometimes the mortgagee, in order that he may continue to collect interest and may have unimpaired security, allows the mortgagor to take the insurance money and repair or rebuild with it. Then the mortgage stands as before; but any payment to the mortgagee in a case of this kind is a payment on the mortgage and reduces it by that amount.

38. Is an insurance policy (fire) expiring on a Sunday or other legal holiday actually and legally in force until noon of the first following business day?

A. There is no reason for any special arrangement to cover contracts of insurance expiring on a legal holiday other than a Sunday. If it is to be supposed that the insured will neglect to renew his policy until it has entirely run out there is no reason why he should not renew it on a legal holiday. A contract made on such a day, other than Sunday, is as valid as a contract made on any other day.

39. A purchases a piece of real estate, but has title to same vested in B, and it is so recorded. However, A holds an acknowledgment from B that in truth and in fact A has paid for same and that the property is A's in reality. In insuring this property against fire the policy should be written in the name of B, as, according to public records, he is the owner. Please state whether the policy is void if the interest of A is not disclosed in same, he having merely a private memorandum acknowledging him as the owner in fact?

A. Whether the policy would be valid or invalid if the interest of A were not disclosed, in such a case as this, depends upon conditions stated in the policy itself. If these require a full disclosure of such an interest the disclosure must be made.

40. A held a New York Standard fire insurance policy covering real property. Before the expiration of the term for which his policy was written he transfers the property. After the expiration of the term for which the policy was written A surrenders the policy to the company and demands the unearned premium. Can A recover?

A. So far as we can find, this question has never come before the courts for settlement. We should be very much surprised, however, if any of them should hold that there was an unearned premium to be returned in a case of this kind. In the first place, the policy becomes void if the insured takes out another policy on the same property, without the knowledge and consent of the first insurer, or if there is any change in the title to the property; and a policy made void by the insured himself cannot form the basis for any claim against the company. If these difficulties were removed this rule of law would still stand in the way of the insured: that every party to a contract is entitled to know when the contract is rescinded.

41. Do you consider that a party taking a policy in one of the mutual companies is able to terminate his financial responsibility in the matter at the expiration of his policy and not renewing it?

A. In order to decide as to the obligation of the holder of a policy in a mutual company, in any particular case, it is necessary to examine carefully the charter of the company, if it operates under a special charter, and also the precise terms of the contract of insurance. It is well settled that the insured may, in some cases, be liable for debts arising against the company after the expiration of his own policy.

42. If a policy reading "improvements made by the assured" is issued to the tenant, in case of loss could he recover under said policy?

A. The courts of several States have frequently held that "the lessee has an insurable interest in the improvements which he places upon the leased premises, whether he is entitled to remove them at the end of his term or not, or even if the lessor is to buy them at such time. In either case his insurable interest extends to the full value of the improvements as they stand on the land."

LIFE.

43. I hold life insurance policies on my own life from one English and three American companies and have paid a considerable amount in premiums on them. They were made payable to my heirs. Can

I legally assign them to a person I am indebted to, that person hereafter to pay all premiums and to hold the policies until maturity? Would possession of policies and deed of assignment (for value received) entitle the holder to collect the insurance when due?

A. If the policy is made payable to the assured, or his heirs, he may assign it without their consent, but an assignment in order to be valid must have the consent of all who are named in it, or are necessarily beneficiaries.

Any act plainly showing an intention to transfer the interest in the policy is held good in this country. Of course the assignment must be made in agreement with the terms of the policy itself, and if the policy provides that an assignment without the assent of the insurers is void, their assent becomes necessary.

44. I have an endowment policy and as there is a condition printed in the policy which reads thus, "No assignment of this policy shall be of any force or effect, except at the option of the company, unless said assignment is attached to the policy and approved in writing by the president or other authorized officer of the company within thirty days from the date thereof," would an assignment of my policy hold if not recorded at the office of the company?

A. The courts are inclined to favor assignments of insurance policies, where such assignments are made in good faith and with a due regard to the interests of all concerned. It is held, accordingly, that "a policy declaring that it can be assigned only on the company's written approval, but not declaring that it would be avoided if otherwise assigned, is not forfeited by a violation of the provision, and the assignee can enforce it."

45. A takes out a policy payable to himself. He assigns it by a regular written unconditional assignment to B. B, the assignee, dies before A, the original holder and assignor. Both A and B having died, under the laws governing the case, would the heirs at law of A or the heirs at law of B be entitled to the insurance?

A. The courts of Wisconsin hold that "unless a policy of life insurance points out to whom the insurance money shall be paid in case the beneficiary dies before the assured, the appointment of the beneficiary is revoked by his death."

46. Please state whether I can collect the amount of insurance of a life policy running twenty-five years and containing a clause that the policy is void in case the insured commits suicide, if the insured has actually committed suicide owing to a disease of the brain.

A. If a policy provides simply that it shall be void in case the insured commits suicide, with no further provision upon the subject, and the insured does commit suicide at a time when he is not responsible for his acts, the policy, as the courts hold, remains in force. Suicide in such a case, the courts construe, as meaning the deliberate act of one capable of directing his own movements intelligently.

47. A wife takes out a policy of life insurance on her husband's life and makes the same payable to herself, and in the event of her death, to her children. The wife dies leaving two children, one child having died previously. Is the child of the one dying entitled to his father's share?

A. The doctrine of the courts is that in the construction of policies such as that described by our correspondent the same principle should be applied as governs the testamentary disposition of property. This principle is that when the language of a limitation is capable of two constructions, one of which will operate to disinherit a lineal descendant, while the other will not have that effect, the latter is to be preferred.

48. An agent insisted that a semi-tontine policy was the same as an endowment policy and the insurance was not consummated. I have known of other similar refusals of agents of large companies. Are life insurance companies not compelled by law to issue an endowment policy?

A. A life insurance company is not legally bound to issue endowment policies, or, in fact, to transact any business. There is no such distinction between an endowment and a semi-tontine policy as our correspondent supposes. An endowment policy may itself be semi-tontine, the latter term having reference merely to the manner in which dividends are paid.

49. A insures his life, policy made payable to B his wife, or her children. A, several years after death of his wife B, exchanges these

policies for bonds. To whom do these bonds or their equivalent belong, A, or the children of B?

A. One who insures his life for the benefit of his wife or children, making the amount payable to them, without reserving any power to himself, has no interest in the policy, and cannot otherwise dispose of it. In the case put by our correspondent, the children still have their interest in the policy unless the power was reserved to A to transfer it, or unless they have sanctioned the exchange.

50. A brother of mine received lately from an insurance company $1,607.01 from a policy on my mother's life, which insurance I was never aware existed, and knew nothing about until his attorney brought papers of assignment to me for my signature. This assignment I absolutely refused to make. He now claims that this money ($1,607.01) is his, although I have never assigned same, he having paid, or claiming to have paid, premiums on same for the past three years. He also has endeavored to get me to sign papers waiving all accounting. Am I not legally entitled to a half of this money, provided even that my brother paid premiums on the life of my mother for three years?

A. We have not sufficient facts on which to decide who the beneficiary may be in this case. The policy itself should show that. A mother's life may be insured for the sole benefit of one son, whether he pays the premiums or not; or the life may be insured for the common benefit of several sons, whether they join in paying the premiums or not. If the policy in this case directs the payment to be made to one son he can collect the amount from the insurer; the insurer's contract in that case, is that it will pay a certain amount of money to this person in a certain event, which has now happened. If the agreement is that the company shall pay equally to several persons, or that it shall pay the whole to the estate of the insured, then payment must be made accordingly and all the persons so mentioned, or all entitled to share in a division of the estate, will profit from the policy. That son who has paid all of the premiums may have a claim for reimbursement against the other beneficiaries, or against the estate, if the policy is not entirely for his benefit. Whether he has such a claim or not will depend upon the

agreement or understanding under which the premiums were paid. If it was agreed that he should pay all the premiums and claim only a pro rata share of the proceeds of the policy this agreement can be enforced. But this is a matter entirely outside the disposition of the insurance money; how that is to be made the policy should show.

51. A carries life insurance in favor of his wife on which he pays the premium. The wife dies, leaving surviving a daughter of theirs who is of age. A married again and dies, leaving all his property, real and personal, to the second wife without, however, mentioning the life insurance in his will specially. To which of the two does the life insurance go?

A. With regard to policies of insurance on the lives of husbands for the benefit of their wives, it is provided by law that "the policy may provide that the insurance, if the married woman dies before it becomes due and without disposing of it, shall be paid to her husband or to his, her or their children, or to or for the use of one or more of those persons." If there is such a provision in the policy it will be enforced. If the children have an interest in the insurance, under an express provision of the policy, that interest will be protected; otherwise the husband succeeds to the wife's interest, upon her death, and he may substitute his second wife as beneficiary if he wishes to do so. Thus the courts hold that "when an insured takes out a policy on his own life payable to his wife, and she dies before him, at her death her interest in the policy passes to him as against her administrator; and if he chooses to name his second wife as the new beneficiary the sole interest in the policy thereafter will be vested in her." If there is no provision in the policy to the contrary, the interest in it passed to the husband upon her death, and when he died it passed to his legatees or those entitled to share his property under the interstate laws. If the wording of his will is broad enough to include property of this kind, then it passed to his wife; if this was not the case the wife and daughter are to share it as in a case of intestacy.

52. A is insured for $5,000, having paid his premiums for about

five years, and the premiums coming due each year on April 1. If A should die on April 15 are his heirs entitled to any rebate on the premium which was paid on April 1?

A. A policyholder pays a certain amount of money to a life insurance company and the company, as a consideration, agrees to pay a larger amount to some person named in the contract, provided the person insured dies within a specified time. If the death occurs and the company pays the amount named in the policy it has carried out its contract. It cannot be called upon to return any part of the money received as premium unless it has clearly and expressly agreed to do so.

53. A widower with a family remarries and obtains an insurance on his life in favor of his wife. As she dies first who is entitled to the money upon the husband's death, he having no children or family by his second marriage?

A. On its face the policy is a contract, which, according to the terms of the question, is payable to the wife, her executors, administrators or assigns. The proceeds of the policy go, therefore, on the death of the husband, to the wife's representatives. But if, instead, of being payable to her executors, administrators or assigns, it should be payable on her death to her children, and there being no children, as in this case, then the question of the husband's control of a policy which is personal property belonging to the wife is not so clear. The soundest opinion, reasoning from analogy, would seem to be that it belongs to the wife's estate, and would, therefore, require the intervention of the executor or administrator to receipt for it in the case of the death of the husband, or to transfer the policy during his lifetime.

54. There being no children, can a wife legally arrange that in case of her death before her husband, a life policy taken out by him for her benefit, be paid to parties not her legal heirs?

A. The laws provide that all policies of insurance issued upon the lives of husbands for the benefit and use of their wives, shall be assignable by the said wife with the written consent of her husband; or in case of her death, by her legal representatives, with the written consent of her husband, to

any person whomsoever, or be surrendered to the company issuing such policy, with the written consent of the husband.

55. I am about to take out $15,000 life insurance which, in case of death, I desire paid to my wife, child and three others, the child's part to be held in trust until he reaches his majority. Now to whom is it best to have the two policies payable, my wife, or is it better to have the money payable to my estate and then dispose of it by will and appoint my executors guardians for the child?

A. The better way would be to have the policies payable to the executors, administrators or assigns of the assured. It would be well, also, to have them covered by a deed of trust containing conditions which would apply to every possible contingency, including revocation. This leaves the policy under the control of the assured during his life, and insures its being applied according to his wishes upon his death.

56. Suppose T takes out a policy on the life of S; said policy containing certain conditions—such as that S is not to engage in certain dangerous avocations, live in certain unhealthy localities; etc., etc., and that S is not to die by his own hands, if any of the above conditions are violated therein, this policy to be null and void. The succeeding section states that the policy was issued (or contract made) on the strength of the representations made to the company's agent by T, concerning the health, habits, etc., of S, and if said representations prove to be false, etc., then this policy is to be null and void, and the premiums that may have been paid by T are to be forfeited to the company. Please notice how each clause or section ends. Now after some years S takes his own life. T, of course, could not ask for the amount of the policy because the conditions have been violated and the contract falls to the ground. But the company has T's money, and is not T entitled to recover whatever amount he may have paid the company? This is not an imaginary, but a real case, and if you will answer through your paper you will favor us, and probably enlighten many of your readers.

A. If the policy is held to be void, the company can retain the money paid. But if S was insane when he took his life, the courts have held that the stipulation concerning suicide does not apply, and the beneficiaries under the policy can recover the amount insured. The question of insanity is one for the jury to decide.

57. Some years ago there was a suit brought on a matured life insurance policy, the beneficiary claiming a part of the accumulated surplus, his claim being that the company was a mutual one and that the proper proportion of the surplus was due each policy-holder at the maturity of the policy.

A. The case is probably that of Greeff vs. The Equitable Life Assurance Society. The main points of the decision, as condensed in the reporter's head-notes, are as follows: "Where, by the terms of a contract of life insurance, the parties have agreed that the policy shall be entitled to participate in the distribution of the company's surplus according to such principles and methods as may from time to time be adopted by the company, and the policy-holder has expressly ratified and adopted the principles and methods so adopted for the distribution of surplus, the contract itself presents an obstacle to the maintenance of an action at law by the policy-holder to recover a proportionate share of accumulated surplus reserved by the company, in accordance with its principles and methods of distribution, over and above the amount of surplus distributed to the policy-holders. Under such a contract of life insurance until a distribution of surplus has been made by the directors of the company a policy-holder has no such title to any part of the surplus as entitles him to maintain an action at law for its recovery; and when the directors have exercised their discretion in regard to the distribution of surplus, the courts will not interfere, where there has been no bad faith, wilful neglect or abuse of discretion." It was further held that the company was not bound, in such a case, to distribute its entire surplus among its policy-holders, but was only required to credit to each of them an equitable share of the surplus, after deducting an amount sufficient to cover all outstanding risks and obligations, having due regard, in the exercise of a proper discretion, to the safety of all its policy-holders and the security of its business. It was also held that "an accumulated fund is not required as matter of law to be distributed among the policy-holders merely because the fund has been denominated by the officers of the company as surplus, in-

stead of a reserve fund." The plaintiff was defeated at every point.

58. I have an insurance policy for $5,000 on which I have paid about $1,300, and I fear I will not be able to pay longer. Are not all insurance companies obliged to pay back a part in case one can no longer pay?

A. When a life insurance policy, after being in force for several years, has by its terms lapsed or become forfeited by the non-payment of a premium or other cause growing out of the policy, and there is no special agreement on the subject between the company and the assured, the law of New York State provides that "the reserve on such policy computed according to the American experience table of mortality, with interest at the rate of 4½ per cent per annum, shall on demand made with surrender of the policy within six months after such lapse or forfeiture be taken as a single premium of life insurance at the published rates of the corporation, * * * and shall be applied as shall have been agreed in the application or policy, either to continue the insurance of the policy in force at the full amount so long as such single premium will purchase temporary insurance for that amount, * * * or to purchase on the same life at the same age paid-up insurance payable at the same time and under the same conditions, except as to payment of premiums, as the original policy." If there is no agreement on the subject in the application or policy such single premium may be applied in either of these ways at the option of the owner of the policy. There is no provision of law under which the policyholder can demand a return in cash of any part of the premiums paid.

59. A has his life insured in favor of his wife, who, after a number of years dies, and the policy is transferred to his son as beneficiary. Now if A should marry again does his second wife have any claim on the policy and if so what proportion?

A. Upon the death of the wife, in this case, her interest in the insurance policy passed by law to her husband and son. The husband's consent to a transfer of the policy to the son

placed the whole title in the latter. Nothing was left for a second wife to take, and she has no interest in the proceeds of the policy at all.

60. I hold a policy in a life insurance company. The beneficiary clause reads as follows: "The said company do hereby promise and agree to and with the said assured, her executors, administrators and assigns, well and truly to pay or cause to be paid at the city of Hartford, the said sum to the said assured, her executors, administrators, or assigns, for her sole use within ninety days after due notice and proof of the death of the said A. B., deducting from the notice taken for premiums unpaid at that date, and in case of the death of the said Mary A. and the deceased aforesaid A. B. the amount of said insurance shall be payable after her death, to her children, for their use, or to their guardian, if under age, ninety days after notice and proof of the death of the said A. B. as aforesaid." At the death of Mary A. she left four children two of whom died previous to the death of A. B. One of the deceased sisters was married and left two children. To whom is the money to be paid?

A. The money to be paid upon the policy in this case is to go to Mary A. if she survives A. B.; but in case she does not survive him the money is to go to her children. All that stands between the children and title to the money, in other words, is the right of Mary A. to collect the amount due upon the policy in case of her survival. It follows, that, as soon as Mary A. dies, her death occurring during the lifetime of A. B., the whole interest in the policy rests at once in the children then surviving. The death of any one of them thereafter, and during the lifetime of A. B. will make no change except that the interest already vested in the deceased child will descend, like his other property, to his heirs or next of kin. At the death of Mary A., in the case under consideration, the title to the proceeds of the policy became vested in her four children. Upon the subsequent death of two of these children, before the policy was due, their interest in it passed precisely as their other personal property passed.

61. Mr. G. H. F. is in our debt to the amount of $4,000 borrowed money, and gave us as security a then "paid-up policy" in the Mutual Benefit Life Insurance Company of Newark, N. J., for

$5,000, issued in favor of his wife, but only transferred to us by the wife, and himself, with the free assent of the company. The wife died about a year ago, and the company claims that the policy would be payable now to the children, according to the second clause in the "promise to pay." Did the death of the wife invalidate her assignment to us? The following is the clause in the policy:

And the said company do hereby promise and agree, to and with the said assured, well and truly to pay the sum insured at their office in Newark, to the said R. R. F. (wife of G. H. F.) or assigns, within ninety days after due notice, proof of death of the said G. H. F. And, in case the said assured (R. R. F.) should die before the decease of the said G. H. F., then the amount of this insurance shall be payable to their children, or to their guardian, if under age, within ninety days after due notice and proof of interest and of the death of said G. H. F., deducting therefrom all indebtedness of the party to the company, together with the balance, if any, of the year's premium.

A. The whole contract must be construed together, and being so construed, the evident intention of it is that the insurance money shall go to the wife if she survives the husband, and to the children, if she does not survive him. The wife could not assign a greater interest than she had, nor could she dispose of the reversion of the children. The assignee of the wife had a right to draw the money in the same case in which she could have drawn it, namely, in case she survived the husband, and in no other. The husband, as guardian of the children, will not be allowed to forfeit their rights in the policy.

62. Does the fact that a husband has children which are not of age bar him from selling to the Assurance Company or transferring to others a policy on his life, which is made in favor of his wife?

A. If the policy is in favor of the wife her assent and that of the company are all that is necessary to make a legal assignment of it.

63. Is an application for life insurance binding on the applicant?

A. The course of events is something like this: The applicant asks for insurance. He is not bound as yet, and the company is not bound; the company may reject his application, or he may withdraw it, at any time before the next step is taken. Both he and the company have the same power and it continues in both for the same length of time. The applicant does not withdraw his application, but leaves

it as a continuing offer to the company, and finally the company accepts the application and issues the policy. The company is bound from that moment, and the applicant is also bound.

64. I am in receipt of an annuity of $600 from a life insurance company, terminating at death. Can the same be reached by creditors?

A. The question is to be determined by the consideration whether this annuity is one which he himself can transfer. If he has power to transfer it his creditors can take it as part of his assets in bankruptcy; otherwise it is exempt from any claim by them. If any person has gone to an insurance company and purchased an annuity for our correspondent, directing that the amount be paid to him, and not to any other, and that the annuity be not transferable by him, then his creditors cannot take it. This is an arrangement which one relative (especially a father) often makes for another; the money is his own and the law will respect his right to say that the income shall be used for the support of the beneficiary, and shall not be handed over to his creditors. But if the annuity was purchased by the annuitant himself, or, however that may be, if he has it in his power to transfer it, then the law will make the transfer in his stead and will cause the annuity to contribute to the payment of his debts.

LIVE-STOCK.

65. A company for the insurance of horses has been started in this city on the mutual plan. To become a member the charge is an entrance fee of 3 per cent on the value of the animal insured. The losses are paid by levying an assessment on the members, according to the losses sustained. Now in case of an epidemic, where the losses would be unusually heavy, would members who are financially responsible, be liable for the entire amount of losses in case other members were unable to pay their assessment?

A. If a number of men associate themselves together and issue to outside parties a policy or guaranty of insurance they would be severally liable as partners to the whole amount of the losses. But where they form an association for mutual insurance they are only bound by the terms of their agree-

ment, and if this provides that each shall pay his own assessment without being liable for that of his neighbor, then his responsibility does not extend beyond his own share of the loss.

MARINE.

66. A vessel having part of her cargo on board is burned at the wharf, and proves a total loss. It was intended that she should proceed to another East India port to complete loading, which would have incurred an extra premium of ¼ per cent marine insurance on all cargo shipped from the original port. The underwriters have charged the extra ¼ per cent in settlement of loss, although the vessel did not reach the port where her cargo was to be completed, and therefore in our opinion did not incur the risk for which we are charged.

A. We suppose that in this case the vessel had been insured for the whole voyage, including a stoppage at the second East India port, and that for this privilege the owner had agreed to pay a premium one-fourth of a per cent higher than would have been demanded if the privilege of stopping at the second port had not been secured by the contract. If this is true the whole of the premium was earned by the company when the risk attached, and the fact that the loss occurred before the second port was reached has no bearing upon the case.

67. 1. Is a marine insurance company liable for damage by water to goods through leakage of ship or any other cause, not positively to be located, and only indicated by condition of merchandise?

2. Does it make any difference whether the damage is by salt water or fresh water as long as it has occurred during the voyage, a statement having been obtained from the stevedore on the other side that goods were stowed in dry and proper condition?

A. 1. If the goods were insured against partial loss or damage, the insurers would be liable for any damage caused by contact with salt water, even though the leakage may not be located.

2. If it is clearly demonstrated that the damage was caused by fresh water this fact would be *prima facie* evidence that the damage did not occur during the voyage.

Nevertheless, if this presumption could be rebutted, and the fact established that the damage did arise in the course of the voyage, the insurers would be liable.

68. A merchant in New York buys cotton in Liverpool for forward shipment and sells same to a customer in the United States c. i. f. New York. Before the time of arrival of the cotton in New York the market advances 40 per cent. The merchant keeps up insurance on the cotton at the market value. The purchaser also insures the cotton for excess over the purchase value without advising the merchant. In case this cotton is lost at sea before being paid for, has the purchaser an insurable interest, and can he collect this excess insurance, or can the merchant collect the whole amount of insurance and settle with the purchaser at the invoice value and 10 per cent?

A. The aim and intent of marine insurance is simply to afford indemnity to the owner or owners of the goods. If any person has such an interest in the goods that he is enabled to insure them for their full value there is evidently nothing left on which any other person can found a right to insure the same goods in his own interest. Our correspondent says: "The merchant keeps up insurance on the cotton at the market value." If he means by that that the seller keeps up such insurance as will represent the highest value of the cotton at any time during the voyage then there is no margin for the buyer to insure. If the seller insures simply the invoice or selling value, and if the market afterwards advances, the buyer may insure an amount representing the difference between the selling price and this market price. Then in case of loss he will have a valid claim for the amount of his policy even though the market may have declined between the day of insurance and the day of loss.

69. Is it common to insure profits in marine risks? What is the custom among merchants in New York, and what percentage of profits, if any, is covered?

A. It is common to insure profits in marine risks. The custom among New York merchants is to add 10 per cent to invoice value, in order to make the value at destination, and to insure this amount. In exceptional cases, where the foreign price can be shown to be very much above that pre-

vailing in New York, the insurance, by special arangement, may be made to represent 20 or 25 per cent. more than New York values. The assured is, very properly, required to give convincing proof of foreign value, as well as of all other requisites to his recovery, and there is little, if any question of moral hazard.

70. 1. We had a case of goods on a wrecked steamer. The company compels us in case of insurance to write the amount of insurance and the firm's name on the back of the shipping receipt. This we did, but the company overlooked it and therefore neglected to insure. Can we hold them responsible?

2. Is the company responsible if we do not insure it at all?

A. 1. Whether the company is liable or not depends upon the nature of the contract entered into by them. If they agree to become insurers of goods in all cases where the amount of insurance and the firm name appear on the back of the shipping receipt, they are liable in this case and cannot take advantage of their own neglect.

2. A mere contract to carry, without any further stipulation, does not make the carrier an insurer against "perils of the sea."

71. A vessel from Hamburg bound for New York stranded near Fayal. The goods were discharged and the vessel condemned. Are the insurance companies obliged to pay the insurance, or must consignees wait for the arrival of the goods by some other vessel?

A. It is the duty of the master to forward the cargo, if he can do so, by another vessel. This may be attended with considerable delay, for which the insurer is not liable. If the goods cannot be forwarded, or if they are perishable goods, which it would be useless to forward, they may of course be abandoned as a total loss and the insurance collected. But the underwriter does not insure against detention, and if the goods finally come forward undamaged nothing can be recovered under the policy.

72. What is the meaning of the term "particular average" in marine insurance? Also explain "general average."

A. Some losses at sea are left where they fall originally;

those are losses in the nature of particular average. Some losses are incurred for the common benefit, as when part of the cargo is thrown overboard to save the remainder; these are general average losses. The president of one of the oldest marine insurance companies in the United States, in the course of an article on Marine Insurance in one of the recent encyclopedias, gives this brief and lucid explanation of the terms: "The word 'average,' frequently occurring in connection with marine insurance, is a name applied to certain descriptions of loss. There are two kinds of average—particular average and general average. The first means damage or partial damage to the ship or to the particular subject to which it relates. The second comprehends all loss arising out of a voluntary sacrifice made of any part of the ship or cargo to prevent loss of the whole, or to rescue the whole adventure from unusual peril. All extraordinary expenses incurred for the general good are likewise included in that definition."

73. 1. Part of a lot of flour shipped by steamer to a foreign port was stowed alongside of some iron piping such as is used in city sewers. It was discovered, after being opened, that the flour had a strong peculiar smell of varnish. Upon investigation it was found and proven that the flour had actually been damaged by contact with the sewer pipes in the hold, and a claim was presented against the steamer. Is the steamship company or the insurer responsible for the loss?

2. A barrel of wine shipped by steamer was delivered empty, and according to the purser's report was found in that condition in the hold; one of the staves was found sunk in, apparently in consequence of a blow received on board. Must we claim from the steamship or from the insurance company?

A. 1. A marine insurance company undertakes to indemnify its policyholders only for damage or loss arising from causes against which human foresight cannot ordinarily afford protection. Damage from such a cause as our correspondent describes clearly falls outside this description. The main requisite in a case of this kind is to be perfectly sure of the facts and be in position to prove them. If it can be conclusively shown that the flour was damaged in the way here described, recovery can be had, not of the insurer,

but of the steamship company. If the steamship company refuses to pay, the owner's remedy is, not to seek indemnity under his policy, but to go into court and force a settlement from the carrier.

2. If a steamship company tenders to a consignee a barrel broken in the way here described, it is the duty of the company to ascertain and make known the way in which the damage occurred. If the company can show that it was caused by unusual stress of weather, and in spite of all proper precautions in the matter of storage, the loss will be one for which the marine insurer must answer; but if the damage is attributable in any way to the fault, negligence or wilful misconduct of any agent or servant of the carrier, or if the carrier cannot explain satisfactorily how it did happen then the carrier must answer for the damage.

INTEREST.

1. A party owes me money and being unable to pay I take his note at four months with interest at 6 per cent. At the end of that time he is still unable to pay either principal or interest and I take a new note at four months, adding the interest due. This goes on for a series of years, the interest due being added and a new note taken every four months. Can this be tortured into conflict with the usury laws in any possible way?

A. Such an arrangement as that described by our correspondent is not usurious. When the note falls due the creditor is entitled to the interest as well as to the principal; if he foregoes this right for four months or for any other time he may, by agreement with the debtor, charge and collect the legal rate of interest for so doing.

2. A holds a mortgage for $5,000 made by B, due January 1, at 6 per cent interest. B pays same on January 5, and A charges him four days' additional interest, 3.33 from January 1 to 5. B claims that as January 1 and 2 were a Sunday and a holiday, the mortgage became due January 3, and that he should only be charged two days' extra interest. Which is correct? If B had paid off mortgage on January 3, could he have been charged two days' extra interest, and do mortgages come under the same class as notes in relation to holidays?

A. Mortgage bonds made after the passage of the Holiday act are in the same condition as any other interest bearing obligations. If an obligation is simply for money to be paid January 1, without mention of any interest, and was made since the act was passed, it was not due until January 3; if then unpaid the amount will bear interest from that date only. But an obligation that is on interest from its date, though not collectable until January 3, will bear interest for the time it runs after it was made. The interest, therefore, is collectable on the above for four days in January.

3. I loaned $5,000 on real estate mortgage. I received the first instalment of interest on January 1, six months after the loan was made. Since that time the interest has been paid regularly on January 1 and July 1. Did I not make a mistake in not taking out interest the day I loaned the money?

A. When banks loan money for a short term they usually take out the interest in advance. But when a loan is made upon real estate mortgage to run for a number of years it is not customary to demand the various instalments of interest in advance, as our correspondent proposes. In the case he puts interest is payable semi-annually, and that fact insures to the mortgagee what is practically a higher rate than that named in the mortgage.

4. Please state whether the seller is entitled to charge interest for the time consumed in forwarding a draft with documents to the buyer and receiving returns of same when selling c. i. f. Sydney?

A. The seller in such a case as this is not entitled to charge interest unless there is a fixed and uniform usage of the trade to that effect or unless it is so stipulated in the contract. A creditor who collects his money by means of a draft cannot expect payment until the draft is presented, and interest, if any were charged, could only be demanded as damages for tardy payments.

5. We have a note discounted at our bank on the 2d of October as follows: Dated Oct. 2d—3 mos. $10,000.00, due Jan. 2-5. Please name the amount it is customary for city banks to charge for same in dollars and cents and what amount they are legally entitled to, with interest at 6 per cent.

A. If the object of the question is to show the difference between the usual reckoning of 30 days to the month (360 to the year) instead of the system established by law, the dates are awkwardly fixed, since a three months' note dated October 2, may mature on Saturday, January 5th, and in many states would be payable Monday the 7th of that month. The interest may be taken for three months ($150) and for five days ($8.33) making $158.33 as the sum total. The 360 days' system would make the interest for three months and seven days ($161.67) as the total.

6. A is a merchant. B, his customer, desires money. A says, "I can't accommodate you, but I can get the money for you at the usurious rate of 10 per cent, and will charge you nothing more than I have to give." So it is agreed. A gets the money at 10 per cent accordingly, giving his (A's) note therefor, and in settlement of accounts charges B with only 10 per cent. Is A chargeable with usury as between himself and B?

A. It has been decided in North Carolina, in a case similar to this, that where an agreement was entered into, whereby the borrower agreed to pay the lender the same rate of interest which the latter was bound to pay to a third person, and which exceeded the legal rate, the transaction was usurious. The Court held that the contract was none the less usurious from the fact that the lender was himself borrowing at a rate which was usurious.

7. A note matures on Sunday and is discounted. Can the bank include in its discount one day extra for Monday, the legal day upon which payment is to be made?

A. Where the period of payment is thus extended by the statute the holder, if it is on interest, or if not the bank that discounts it, can claim interest for the extra time.

8. Can a mercantile house legally charge more than 6 per cent interest on current accounts with their constituents in another State if they have an agreement with them to that effect? If not, why can a bank do so in making loans to its customers?

A. A merchant doing business cannot legally charge a customer living in or out of the State more than the legal

rate of interest in an account current. A bank may legally take interest in advance which makes the interest on the money loaned more than legal rate. But our correspondent possibly refers to some case where banks charge interest that is really illegal and usurious; but even here the two do not stand at all on the same footing. The merchant who does it is subject to prosecution, with a much severer penalty in case of conviction, than the officers of the bank would likely be subject to.

9. A holds a demand note bearing 6 per cent per annum. The note has run over five years now, and nothing has been paid upon it, neither any part of the principal nor any interest. The maker of the note, B, is now ready to pay it in full. The holder, A, insists upon his right to cast up the interest at the end of the first year, add it to the principal, and charge interest upon that sum for the second year; then to add in the second year's unpaid interest to make up the third year's principal. Is this right?

A. In such a case as this the debt draws simple interest only, not compound interest, from the due date until the time of actual payment. Interest upon interest, or compound interest, cannot be collected unless the contract expressly calls for it, and it cannot be collected even then unless the contract was made upon a valid consideration and after the original interest became due.

10. A note with interest dated in Minnesota, but made payable in New York, what rate of interest will it bear? Which laws govern the rate of interest on a note, the laws of the State where a note is made, or those where it is payable?

A. It is a general principle of contracts that they are to be performed in accordance with the laws in force at the place of performance, unless conclusive evidence of a different intention can be produced. A contract to pay money in New York, with interest, will be construed, in the absence of proof to the contrary, as an agreement to pay the rate of interest prevailing in New York.

11. The bank of A made advances to B to carry on his business—tobacco warehouse. B fails, owing bank large amounts secured by mortgages. The bank attempting to realize on said mortgages, B

sues out an injunction, pleads usury, asks for an account, etc. One of the mortgages is upon land claimed by the wife of B as her separate estate. She intervenes in said suit, charging usury in the transaction between bank and her husband, etc. The court holds the contract was usurious, but allows the bank legal rate of interest on said advances and directs that the account be reformed by deducting from it all excess that was charged over legal rate of interest. How far back should the reformed account extend?

A. It has been decided in North Carolina (see Purvis and wife v. Carstaphan, 73 N. C., 575,) that when a wife joins her husband in a conveyance of her separate property to secure a debt of the husband, the relation which she sustains to the transaction is that of surety. It is a well settled principle, which has been decided in Jarratt v. Martin, 70 N. C. R., 459, and elsewhere, that the surety on a bond is entitled to all the legal and equitable defenses to which his principal is entitled, which attached to or was connected with the debt evidenced by such bond; and it is competent for such surety to introduce any evidence tending to set up such defense. In the case under consideration, the wife having signed and deposited with the bank a mortgage on her separate property "as security for what was due by B at the time of the deposit," has become entitled to every defense to which B himself would have been entitled, and the correction will be necessarily co-extensive with the account and require a correction of all the items into which the obnoxious element enters.

12. What is rate of interest upon notes dated and executed in Michigan by parties living in Canada who gave the notes in settlement for the purchase of American goods, these notes being payable in Canada? The notes read "with interest," but state no specific rate.

A. When a note calls for interest, and the rate is not named, the amount of interest to be paid is the legal rate of the place of payment. A note executed in Michigan, payable in Canada, with interest, is to be paid with the interest allowed by the statutes of Canada, 5 per cent.

13. I am the owner of a demand note, which is now almost six years old. Must this note be sued upon, if at all, within six years of

its date, or within six years from the date of the first demand made for its payment? If there is any way to renew such a note without suing on it, please describe the method.

A. A note payable on demand is a valid claim not barred by the statute of limitations until the time from its date equals the legal period for outlawing. When that time is about to expire a new note may be taken; or a payment, however small, towards the principal or interest of the existing note may be made; such a payment will result in giving a further lease of life to the whole claim, but the fact and amount of payment should be recorded on the back of the note, together with the date of payment, to serve as evidence.

INTERSTATE COMMERCE LAW.

1. Does the Interstate Commerce law compel railroads, who name a through rate from a certain mine to the ports, to handle the same article to intermediate stations at the same rate as the through rate would be?

A. What is known as the "long and short haul clause" of the Interstate Commerce Act is to be found in Section 4, and is as follows: "It shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance: Provided, however, that upon application to the Commission appointed under the provisions of this Act, such a common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for transportation of passengers or property."

2. If an agent who is not known to be a direct representative of a

railroad company, but who operates, so far as appearances go, in his own name, offers to ship merchandise for us at the regular rates of the railroad company less a certain discount or import commission, which we assume is part of the agent's own commission obtained from the railroad company, are we amenable under the law?

A. If these goods are to be carried in interstate or foreign commerce the merchant who knowingly accepts a rate less than that published by the carrier is, in our opinion, amenable to the penalties of the Interstate Commerce Act, as amended by the Act of February 19, 1903, known as the Elkins-Mann Act. That statute declares that "it shall be unlawful for any person, persons or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier."

3. Please give us some information as to the Interstate Commerce law as to the obligations of the railroads in regard to receiving goods from other States and Canada.

A. The Interstate Commerce Act is applicable to carriers engaged in transporting persons or property from places in the United States to adjacent foreign countries, or from such foreign countries to places in the United States. One of the provisions of the Act, to be found in section 3, is that "every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith."

4. A complaint was brought before the Interstate Commerce Commission and at the hearing, at the request of one of the commissioners, because of sickness in the commissioner's family, he wished to shorten the hearing, and because the Act reads: "Sec. 13. No com-

plaint shall at any time be dismissed because of the absence of direct damage to the complainant," the damage claims were withdrawn. The complainant thinks that he proved his case, but after a year and a half for deliberation the Commission dismissed the case, because the complainant did not show that he had been damaged. What is complainant's remedy?

A. The Interstate Commerce Commission is not a court or a legislative body. It is simply an administrative board, exercising administrative powers solely, and if it refuses to do a duty plainly placed upon it by the law, or to do it in a manner clearly set forth in the statute, the proper remedy would seem to be by mandamus. A court of competent jurisdiction should be asked to compel the Commission to do its plain duty according to legal forms.

5. I delivered three carloads to the local agent and requested him to sign a bill of lading at prevailing rate. He refused, on the ground that he had just received instructions from the general freight agent to advance rates 2c per cwt. immediately. Does not the Interstate Commerce law require notice of advance in rates to be published before the new rates become effective?

A. The Interstate Commerce Law, in its present form, provides that when rates have once been fixed by an interstate carrier no advance in such rates shall be made, "except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection." It is unlawful for the carrier "to charge, demand, collect, or receive * * * a greater or less compensation * * * than is specified in such published schedule of rates, fares and charges as may at the time be in force."

6. A broker receives an order for a carload of merchandise to be shipped free on board, naming the railroad. An order for the goods on the warehouse is handed the railroad agent, who, by custom lighters free to shipper a carload lot. A clean bill of lading is sent, no charges on same, to buyer. The railroad present the buyer with a bill for lighterage. Buyer deducts same from seller's bill and remits,

remarking he bought free on board. Broker goes to the railroad for an explanation. He is told that this buyer has a cheap cut rate of freight which does not include New York lighterage, and further buyer knows it. I wish to know who is to stand this expense of lighterage.

A. If a seller agrees to place goods on board the cars free of expense to the buyer, all charges for so placing them must be borne by the former. If there are two rates of freight, one of which includes lighterage, while the other does not, a buyer is under no obligation to pay the higher rate in order to lessen the burden of the seller who has agreed to deliver the goods upon the cars. In the case here put, if the buyer has secured a freight rate which is less than that charged by the same road to other persons for a like service, the Interstate Commerce law has been violated. The buyer is guilty of a misdemeanor if he has secured such lower rate by any kind of misrepresentation, or "by the payment of money, or other thing of value, solicitation, or otherwise." If the officers of the road have granted him the rate without any deception or connivance on his part, they alone are guilty.

7. Please let us know whether shipments via canals and lakes do also come under the Interstate Commerce law as regards classification.

A. The first section of the Interstate Commerce law defines the carriers to whom the law applies as follows: "The provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common contract, management, or arrangement, for a continuous carriage or shipment, &c." Carriers wholly by water are not included.

INTESTACY.

1. A man recently died leaving a widow, and three children all of age, and without a will. The heirs want to have his effects legally divided at small cost. What are the necessary steps and fees to be incurred?

A. If the four persons will agree as to the division of the property, and sign the agreement in the presence of witnesses, the estate may be settled without costing a cent.

2. 1. A widow dies intestate, leaving one son and an adopted daughter, how will her property be distributed, there being both real estate and personal property?

2. The son being a bachelor, to whom will his property descend in case he should die intestate?

3. Should the son marry, and his wife die without issue, before he does, who then is entitled to the property?

4. In case of death of either husband or wife, dying intestate, without issue, leaving both real and personal property, what is the law?

A. 1. An "adopted" daughter has no interest whatever in the estate of an intestate who has acted toward her the part of a mother unless the latter has bound herself legally to recognize the girl as an heir. The son will, therefore, inherit the entire property.

2. The adopted sister will have no claim upon the property of her so-called brother. If he dies intestate his property will go to his legal heirs, whoever they may be, without reference to her.

3. If the son marries and is left a childless widower, he stands in the same position as before his marriage.

4. In case the marriage has been without issue, the wife's real estate, if she dies intestate before her husband, will go to her lawful heirs, he having no interest in it, although if she had borne him a child he would have a life use of it; her personal property will become his altogether, as, if she has no descendants, he may administer upon it, without accounting to any one.

3. My father-in-law died intestate, and my wife also without a will, leaving me a boy, now three years of age; what are his rights?

A. The child inherits the same share as his mother would have in her father's estate. What share that is will depend on the number of heirs. If the mother-in-law is living, she will have her dower interest. The remainder is to be equally divided among the father-in-law's children, and our corre-

spondent's boy, being the only child of the daughter, will have the same share as the brothers and sisters of the mother, if there are any. If none, he takes all the remaining estate. This is on the supposition that the daughter died before the father.

4. When must administration papers be obtained? Is there a time limit? If a man in a small retail business dies can his widow continue the business and make a settlement with creditors or must the settlement be made before the business can be continued?

A. There is no special limit of time within which letters of administration on the estate of a deceased intestate must be taken out. It is advisable, for a number of reasons, to take them out promptly after the death. If some member of his family does not apply for letters with reasonable promptness, any creditor, or other person in any way interested in the estate, may demand that an administrator be appointed; if no relative of the deceased is willing to serve in that capacity, a creditor or the public administrator will be directed to take charge of the estate.

5. Can a sister inherit of her brother who was in business in Connecticut and died suddenly without a will, leaving a wife and two adopted children?

A. In the case which our correspondent puts if the children were adopted according to the rules and formalities prescribed by law, they and the widow of the deceased would inherit the whole of the property to the exclusion of his sister. If the children were adopted without the sanction of a court and the observance of the legal forms, then the sister, under the Connecticut law, would be entitled to a portion of the real and personal property of the deceased. The portion which she would get would depend upon the question whether there were other brothers and sisters to share the inheritance, and also whether the deceased was married before or after April 20, 1877.

6. A, unmarried, has money in savings bank. His mother is living, also children of living brother and sisters, and of deceased sister. A leaving no will, how would the money be distributed upon the death of A?

A. The personal property of one who dies intestate leaving no children or representatives of them, and no widow or father, is distributed in equal shares to the mother and to the brothers and sisters, or the representatives of such brothers and sisters. Those who take in their own right (the mother and the living brother and sisters, in the case put by our correspondent) receive equal shares, and those who take by representation (children of a deceased brother or sister) receive the share to which the parent whom they represent, if living, would have been entitled.

7. Please inform us if half brothers and half sisters inherit a brother by the same father, but not by the same mother. Is the law different if the half brothers and sisters of the deceased live in Europe and are minors?

A. In the distribution of the personal estates of those who die intestate relatives of the half-blood take equally with those of the whole blood in the same degree; and representatives of such relatives take in the same manner as the representatives of the whole blood. For the descent of real estate the rule is the same, with this exception: If the inheritance came to the intestate by descent, devise or gift of some one of his ancestors all those who are not of the blood of such ancestor shall be excluded from such inheritance. Minors are entitled to the same rights of inheritance as persons of full age, and alienism is no bar to the succession to personal property. Alien heirs may take and hold real estate, by descent, as if they were citizens of the United States.

8. A resident, dying intestate, leaves, besides personal property, a considerable amount of real estate. He has brothers and sisters, some of whom are citizens of this country, and others reside in Europe. The point in doubt is whether the brothers residing in Europe, being aliens, are entitled under the law to any claim on the real estate, they having no intention of becoming citizens of the United States.

A. If any alien resident or any naturalized or native citizen of the United States, who has purchased and taken a conveyance of real estate, has died, or shall hereafter die, leaving persons who, according to the statutes of the State,

would answer the description of heirs of such deceased person, or of devisees under his last will, and being of his blood, such persons, whether they are citizens or aliens, are declared capable of taking and holding, as heirs of such devisees, of such deceased person, as if they were citizens of the United States, the real estate owned and held by such deceased alien or citizen at the time of his decease.

9. Mr. A, his wife and child leave for Europe and perish by drowning, leaving no wills behind. How are their estates divided by the laws; their parents are living, and both Mr. A and his wife leave brothers and sisters?

A. It is held by the courts that there is no presumption as to survivorship in cases where several persons perish in a common disaster. There is no presumption that either of such persons survive the other, or that their deaths were simultaneous; there is simply a failure of proof. Property rights are disposed of as if the deaths had occurred at the same time, not because of any presumption of simultaneous death, but because there is no evidence to the contrary. Any one who claims through a survivorship must prove that the person through whom he claims survived and inherited from the other.

10. A and B buy a lot on which they build a house. In the building transaction A becomes indebted to B, for which he gives B a note payable in twelve months. A dies intestate leaving children, all minors, and no other property than his share of the real estate. The rental of the property is insufficient to offset A's indebtedness to B before the outlawing of the note. Can the legal guardian of the children settle on a price with B for A's share in the real estate and give B a clear title?

A. A man's minor children are not liable for his debts and the guardians of such children would not be allowed to sell their land for the purpose of paying such debts unless an order of the court to this effect were first obtained; it is very doubtful if the court would grant such an order in a case of this kind, because there is another course of procedure pointed out by the law. Though the heirs of a decedent are not

liable for his debts, his property, real and personal, is so liable.

11. If a lady (aunt) dies, leaving a sister's child and a brother's two children, they being nearest living relatives, without making a will, how will the estate be divided?

A. When a woman dies intestate, leaving as her nearest relatives, nieces and nephews, they share her estate equally among them, whether they are the children of the same brother or sister or not. If both brothers or sisters of the deceased had survived her they would have shared the property left by her equally between them and the children would have had nothing; if one brother or sister had died before the intestate, leaving a child or children, and the other had survived the intestate, then the survivor would take half the estate (nothing going to his children) and the child or children of the other would take the remaining half to be shared equally among them if there were more than one.

12. The wording of a will is this: "I give, devise and bequeath all my estate to such persons as would by the laws be entitled to the same, as my next of kin, had I died intestate." The deceased left brothers and sisters, nephews and nieces, grandnephews and cousins. Who, and only who, are the next of kin?

A. It is held in most states that "next of kin" in its ordinary sense means next of kin under or according to the statute of distributions. It means relatives by blood, does not include a widow or surviving husband, but does include those persons entitled to claim per stirpes or by representation.

13. Where a grandfather leaves no will, does not a grandchild only inherit through its parents?

A. A title to real estate legally surrendered by the daughter or barred by the lapse of years during her lifetime, cannot be revived for the benefit of her children or other heirs. The statute of confirmation of title by quiet and undisputed possession will not run against a minor child if the mother died before the limit was reached; but if she survived beyond the limit she had afterward no legal claim,

and therefore none could descend through her to her offspring.

14. A dies intestate. His brother, B, wishing to obtain letters of administration so as to close up the estate, begs C, D and E to go surety for him. They do so. At the end of a year B presents his accounts to the court. Is such action sufficient to cancel the bonds given by C, D and E?

A. The bondsmen are not relieved from their responsibility until the estate is finally settled, and the administrator having finished his service makes a formal motion for acceptance and release.

15. A person dies intestate, leaving children, some of whom by book account are indebted to the estate. Can the administrator set off such indebtedness against the share coming to the heir?

A. The first duty of an executor or administrator is to collect all outstanding claims of the estate and pay its debts. Distribution to legatees or distributees comes later. Accordingly, if he finds that anyone who is to be a beneficiary in such distribution is indebted to the estate it is the duty of the executor or administrator to see that this indebtedness is paid in one form or another. If, without collecting this amount due the estate from any legatee or distributee in cash, he can pay the debts owing by the estate, then he need not collect it in that way; but in that case it will be his duty to deduct the amount due the estate from any legatees or distributees in making payment to him.

16. If a parent dies without making a will, and one of the heirs performs all the necessary services during said parent's sickness, can said heir recover for said necessary services?

A. Where an adult child resides with and performs valuable services for the parent, an understanding between them for recompense may be shown. Where the parent was sick and infirm for a long time, and where the child's services were indispensable or very important, a mutual understanding that he was to be paid is often inferred from these circumstances and compensation allowed out of deceased parent's estate, upon the usual footing of a creditor's claim.

INVENTORY.

1. My correspondent claims that goods which have depreciated in value should be marked down to a price corresponding as nearly as possible to that at which they could be sold in the open market on the day of stock-taking, but that goods whose value has appreciated should be taken at cost, my correspondent claiming that no profit has been realized on such goods until they have been sold and paid for.

A. The object for which an inventory is taken will indicate, to some extent, the basis of valuation to be adopted. If the object is to show, as nearly as may be, the value of the stock at the time of the inventory all goods should, of course, be set down at their market price value at that time. In any case there can be no reason why a different basis of valuation should be adopted for those goods which have deteriorated in value from that used in the case of those which have appreciated. If goods which have depreciated should be set down at the market price, for any reason, those that have appreciated should be set down at the market price for the same reason. If no profit has been realized on the latter until they are sold, it is true, in precisely the same sense, that no loss has been incurred on the former until they are sold. Whatever the object of the inventory may be, some basis of valuation should be fixed upon and followed throughout.

INVOICE.

1. Are merchants obliged to certify to their invoices before a notary public when making shipments to Canada?

A. Section 35 of the Canadian Tariff Law, as it stood originally, contained rather minute and detailed directions as to the steps to be taken by "the person entering any goods inward"; it does not require a sworn or certified invoice from the consignor; but we find that an order in council has been issued (it is contained in a late volume of Canadian session laws) setting forth the form of certification which must now be made by any person, firm or corporation selling goods to anyone in Canada. All exports from the

United States to Canada must now be accompanied by these certified invoices.

JOINT OWNERS.

(See also Real Estate.)

1. The inventor of a patent and his partner join in a proper writing and assign to B the rights for a certain State. B then sells or assigns to me one-half interest in this State right and it is put out on a royalty basis in one factory; the royalty is divided equally, half and half, between B and myself. At the time the assignment of the half interest to me was made we both thought, and B still acknowledges before witnesses, and has no hesitancy about it, that we expected to divide any proceeds from sales or royalties equally; and the royalties to date coming due from the one place in which we have the patent in use have been divided equally. We learn here at a later date, a couple of years after, that we can deal independently of each other. Now, from the fact that this was not our intention at the time of the deal, would I have recourse on B for any loss he might put me to by his dealing independently of me and not as a unit?

A. It is true, that each joint owner of a patent has all the rights of a sole owner. This is a right that the joint owners have originally. It is like other property rights in this respect, that they may keep it as it is or dispose of it for a valuable consideration; and if they do dispose of it of course they no longer have it. That is the situation of B and our correspondent in the case under consideration. When each had all the rights of a joint owner they mutually agreed that they would become equal partners in the proceeds of the invention, waiving the rights they formerly had as joint owners. This agreement is valid and enforceable. It is of no avail to B to point out that, as a joint owner, he would have certain rights or privileges. For a consideration which is valuable and sufficient he has exchanged those rights for others. As between him and the other party to the contract, that exchange deprives him of his rights as joint owner as completely as if he had never had such rights at all. If B attempts to make any sale, or to do any other thing inconsistent with the correspondent's existing rights as a full and equal partner, such sale or other act may be prevented by

injunction; B may also be compelled to account for any profits he may make, in any way, out of the patent.

JUDGMENTS.

1. Be kind enough to inform us if the law allows renewals of judgments or makes it needful where not paid in part as against real estate, i. e. inside the legal limit. Also is it obligatory on holder of such judgment to renew to keep it valid or legal?

A. A judgment is not renewable. In order to continue a judgment beyond its limit, it is necessary to bring an action upon the judgment before the term has expired.

2. If I obtain a judgment of $2,000 against B, and on selling his stock under execution realize only $500, can I hold B for the balance, or is his debt cancelled through this sheriff sale?

A. The debt is not discharged unless the execution is fully satisfied, and the debtor is held for the portion not met by the sale.

3. 1. Is there such a thing as "a confession of judgment," and is it equal to a judgment given by a court?

2. Can a judgment be obtained against a person without his knowledge?

A. 1. The laws do recognize a confession of judgment. "A judgment by confession may be entered, without action, either for money due or to become due, or to secure a person against contingent liability in behalf of the defendant, or both, as prescribed in this article. A married woman may confess such a judgment." The court enters up a formal judgment, on the basis of the confession, and this is as valid as any judgment.

2. A judgment may be obtained against a defendant without his knowledge. A topic which has filled a very important place in all daily newspapers is a series of indictments growing out of a case in which the principal question at issue was whether the defendant in a divorce suit had or had not notice of the suit before it was decided against him. One decision, at least, was to the effect that he had no notice.

If a defendant cannot be found so that the summons may be served upon him in person, the law provides that it may be left at his dwelling with anyone of sufficient age to understand the importance of handing it to him; or may be affixed to the door of his dwelling house; or, in some cases, may be served simply by publication in the newspapers. In any of these cases it might happen that he never had actual notice of the pendency of the suit.

4. Fifteen years ago A had business with B. A fails, owing B $5,000, and has judgment recorded against him. Five years later B fails, but manages to settle with his creditors. Two years after that B fails again, and up to date has been unable to satisfy his creditors. B's assignee has never tried to collect the judgment against A, and in all probability said judgment was not included in the assets of B when turned over to the assignee. Neither B nor his assignee can be found at this late day. With whom must this judgment be settled now, B or his heirs, B's assignee, or with whom?

A. It would be well in the case put by our correspondent to learn whether there is any record showing that B has assigned his judgment against A, either to his general assignee or to any other person. If there is such a record it will show who is now entitled to enforce payment of the judgment. If there has been no assignment, payment should be made to B or to his executor, or administrator. If B cannot be found, and if there is no executor or administrator of his estate, payment may be made to the clerk of the court in which judgment was rendered, if no execution has issued, or to the sheriff, if execution has issued.

5. Please inform me if a judgment debtor can in any way be prevented from taking a trip abroad by a judgment creditor. The debtor has nothing but ordinary baggage and goes at the expense of his family.

A. As a general rule a judgment creditor cannot prevent the judgment debtor from leaving the State at his will. If the debtor is about to carry with him and take beyond the jurisdiction of the court property out of which the judgment might be satisfied the creditor may attach that and prevent its removal, but the presence in the State of the debtor him-

self is not ordinarily necessary for the enforcement of any of the creditor's rights and for this reason he cannot be compelled to remain here. But where the special facts are such that the debtor's absence from the State would defeat some right of the creditor, the debtor can be compelled to remain within the jurisdiction, and this may be done by an actual arrest, if necessary.

6. 1. What is the legal effect of recording a judgment and must an assignment also be recorded?

2. To whom can payment legally be made in satisfaction of a recorded judgment in order to obtain a certified receipt?

3. Can a judgment once recorded be reopened on application and if so, what method must be pursued?

A. The record of a judgment is notice of the lien of the judgment upon real estate and of its priority over judgments afterwards secured against the same defendant. An assignment of a judgment ought also to be recorded in order to protect the interests of the assignee. If a judgment debtor should pay the judgment, or any part of it, to the person who secured the judgment, having no actual knowledge and no notice from the record of an assignment, the payment would be protected and the assignee could not enforce the payment to him.

2. Payment can legally be made to the person who appears from the record to be owner of the judgment when the payment is made; if there has been an assignment, but the record does not show it and the judgment debtor has no actual knowledge of it, payment may legally be made to the assignor.

3. A recorded judgment can be reopened or set aside at any time within one year after the filing of the judgment-roll. In certain special cases this may be done even after the expiration of the year.

7. A near relative of mine owed me $500, and gave me a note for same. He was unable to pay the note when it became due, and fearing he might not pay me on account of the relationship, I sued and won a judgment. Can I file my judgment any time, and can I hold off pushing same (legally) for as long a time as I wish?

A. One who has secured a judgment is not compelled to file it immediately or at any definite future time; he may take his own time unless the unsuccessful litigant demands that the judgment be promptly filed, as it is his privilege to do. If neither of the parties directly interested wishes to have the judgment filed immediately there is no one else to interfere. A judgment may be legally enforced at any time within twenty years from the date of its rendition in many States, but the length of time varies in others. If it is not enforced or new action taken within the proper time a presumption will arise that it has been satisfied.

8. S has a small farm and there is a judgment against him. S sells the grass growing on it to G, who cuts and is curing it, and the judgment creditor comes with an execution and levies on it. Is the sale to G good?

A. A judgment lien on real estate constitutes no property or right in the land itself. It merely confers upon the person in whose favor the judgment has been rendered a right to levy on the property to the exclusion of other adverse interests subsequent to the judgment. The judgment creditor has a mere general lien and he cannot, like a mortgagee or other holder of a specific lien, sue for waste or recover grass or other crops produced upon the land before a levy and sale.

LANDLORD AND TENANT.

1. A leases a dwelling from B, the owner. A, after several months' occupancy, has a carpenter put a small piazza on the second floor, notifying B, who writes to him from a distant city not to have such a piazza built, as it would destroy the architecture. The letter arrives too late, as the job was completed. A writes regrets but reiterates the fact that he intended to pay for it. Before the bill is paid A dies. Can the carpenter place legally a *lis pendis* on the dwelling?

A. A tenant of real property is not permitted to spoil the landlord's building by unsightly additions, made without the owner's consent, and then to compel the landlord to pay for such spoliation. The contractors, workingmen or material men are not entitled to a lien in such a case as our

correspondent describes. The law expressly provides that there shall be no lien on real property except in favor of one who performs labor or furnishes materials for the improvement of such real property, "with the consent or at the request of the owner thereof, or of his agent."

2. I hold a written three years' lease on the dwelling I now occupy. To what extent and at what times the law or the usual customs compel me to allow would-be tenants to go prospecting through the house, the lease being wholly silent on the subject?

A. If a lessee is bound by a covenant in his lease to allow the landlord to show the premises to prospective tenants for a short time prior to the end of the lessee's term, this covenant can be enforced like any other. If the lessee has not expressly agreed to allow the building to be shown he need not allow it. It is well understood that before a lease is made, while the landlord is in possession of his own premises, he has a perfect right to keep all other persons out of the building, to determine what person, if any, shall be admitted to it, and when and for what purpose they shall be admitted. This is a right which the lessee takes over to himself precisely as it formerly existed in the landlord or owner of the building. If the lessee chooses to limit the right, or to part with any portion of it, this may be done by a covenant in the lease setting forth the extent to which the lessee's exclusive privilege of choosing his visitors shall be limited; the privilege is thereafter limited to that extent, and no further.

3. I placed some household goods in charge of the janitor in an apartment house where I reside. On looking for same they could not be found. Can I hold the landlord responsible for loss of the same?

A. It is not likely that the landlord can be held in the case our correspondent puts. He certainly is not liable unless one of the duties which he required the janitor to perform was that of taking charge of and becoming responsible for the goods of the tenants. If that is a service which the janitor performs merely for accommodation and as something outside the duties of his position, then the landlord

cannot be held responsible for the manner in which he performs it.

4. We rent an entire building to one tenant, giving him the right to sublet, and he sublets one of the stores of the building. During a recent storm the flagpole on the roof is struck by lightning and pieces in falling damage the awning and sign of said sub-tenant. He makes a claim for damages to us. Has he or anyone else any legal rights against us under the circumstances?

A. When an owner of a building, or any other person having entire control of it, has leased the whole building to another person the latter becomes primarily, and in most cases solely, liable for any damage caused by defects in the building or by negligence in keeping it in repair. The only exceptions to the rule are these two: If the landlord has agreed to keep the building in repair, and the damage has arisen out of his failure to make repairs after due notice that they were needed, the landlord can be held; or if the landlord has leased the building with a dangerous nuisance already upon it, and the injury arose from the existence of this nuisance, the landlord is liable jointly with the tenant, because he is, to some extent at least, responsible for the damage.

5. What action ought a landlord to take in order to enter and make repairs, which are required by the Board of Health, to premises which are occupied by lessee who has failed to comply with his lease, the terms of which bind him to "comply with all orders of the Board of Health or other boards having authority and pay all bills for compliance with same"?

A. A landlord may enter under authority and by order of the Board of Health to make such improvements in the premises as the Board have demanded.

6. Can the owner of a house, who lets furnished rooms, be held liable for loss of property stolen during absence of tenant?

A. The owner is not legally liable for the loss.

7. A tenant stipulates that I am to bring the water in from the street mains. The city will not deliver any water to a tenant unless on the order of the owners. I give an order to let the tenant have water and when the water rents become due the tenant refuses to pay

for the water, on the theory that I have stipulated in the lease that I am to pay all taxes. Am I liable for the payment of the water rent tax?

A. It does not appear to us to be necessary to decide whether the taxes here mentioned do or do not include water rates; because even in the absence of such a clause the owner is bound to pay all taxes and assessments against his property except in cases where the lessee has expressly stipulated to take this charge upon himself. It was held that "in the absence of a covenant to pay, or of circumstances raising an implied promise on his part in favor of the lessor, a lessee is not bound to pay the regular or extra assessment for water or any other tax upon the premises."

8. I am the owner of tenement or flat houses, and it frequently occurs that some tenants refuse to pay rent. I then give such tenants official notice to appear in court and show cause why they do not pay the rent. The tenant appears in court and pleads sickness or poverty, and the justice gives the tenant a few days to move. I wait until that time expires and the tenant fails to move. Then the marshal has a hard time to get the justice to sign a warrant to dispossess the tenant but finally succeeds. When the marshal calls to dispossess the tenant the latter produces a letter written by a doctor (not sworn to at all) that the said doctor is treating the tenant's wife and that the doctor considers it will endanger her life to remove her for about two weeks. Wishing to be lenient we postpone action till after two weeks, when the doctor gives them another letter saying the same thing, and that he thinks it will be some time before the sick patient can be safely moved. Please advise us what is the proper and legal course for us to pursue.

A. A landlord, if he personally superintends the forcible removal of a tenant, or issues instructions concerning it, may make himself liable to damages in case of negligence or unduly harsh measures; but it would seem that in such a case as our correspondent puts the landlord ought to be able to get possession of his premises without superintending the matter in person. When he has gone into court and established his right to possession it becomes the duty of the judge or justice to issue a warrant under his hand, directed to any one of certain officers and commanding the officer to remove all persons therefrom, and also to put the petitioner

into the full possession thereof. Then it becomes the duty of the officer to execute the warrant with reasonable promptness and without being further urged by the owner of the building or being allowed to look to him to stand between the officer and a suit for damages. The officer is well paid for his work, is sworn to do it, and has executed a bond for the faithful discharge of his duties.

9. A tenant has signed a lease for a house in which it is stipulated that the tenant is to do all the interior repairs and also comply with the regulations of the Fire Department and Board of Health. The toilet and bath in the house being old-fashioned, in the event of the Board of Health requiring it renovated and replaced, who must do it, the landlord or tenant?

A. If this tenant had covenanted merely to "do all the interior repairs" he would be in position to raise the question, with some prospect of success, whether putting in new plumbing before the old was worn out was a repair, or rather a rebuilding or betterment. As the matter actually stands, however, the tenant has agreed, not simply to make all needful repairs, but also to "comply with the regulations of the Fire Department and Board of Health." If the Board of Health requires that part of the plumbing be renovated or replaced, the duty to pay for such changes will fall finally upon the tenant under this covenant.

10. A occupies three upper lofts of a building and B occupies the store. A water-pipe springs a pinhole leak in the premises occupied by A, causing damage to B's goods. A claims the accident was unavoidable. Can B hold A for damage done?

A. A is justified in having water-pipes upon his premises, and the only duty he owes his neighbors with regard to such pipes is the duty of using reasonable care to see that no damage results from any defect in the pipes. Such care seems to have been exercised in the present case. Reasonable care is all that the law demands of any man in the use of property or appliances which it is proper for him to have upon his premises, and which are not necessarily a source of danger.

11. A leases a building to B for a term of years, with permission to make alterations, additions and improvements, the same to revert to A, along with the building, at the end of the lease, A agreeing to make prompt repairs of fire damage where partial loss is suffered. Does this undertaking bind A to repair damage to the additions, improvements and alterations which may have been, under the terms of the lease, added to the building by B after taking possession?

A. So far as we can find, this precise question has never been brought before the courts for determination. Wherever it has arisen, however, the courts have held that the landlord's covenant to repair must be taken to have reference to the property as it stood at the time of the lease. If it is intended that the landlord shall repair buildings or additions erected by the tenant, as well as those in existence when the lease is made, that intention may be clearly set forth in a very few words. If this is not done the two agreements mentioned by our correspondent are held to be entirely independent of each other, and that binding the landlord to repair will be construed with reference to the condition of the premises when the lease was made.

12. A has a lease from B for a store for three years, and the lease has one and a half years to run. A, through bad business, is unable to meet expenses and pay rent, and therefore desires to discontinue business and give up the store. Can B hold A for breaking the lease, and what action can B take and to what extent?

A. If A has taken B's property under a lease for three years he is legally liable for the rent during the whole of the three years whether he cares to make any use of the property or not. This liability is to be enforced like any claim for debt. Judgment can be taken against the tenant and any real or personal property belonging to him, barring a few unimportant exemptions, and also any money due to him from other sources may be levied upon to satisfy the judgment.

13. If a store is leased for a year or more, and the owner dies or sells the property before the time is out, is the lease still good?

A. If the proper steps have been taken as to recording a lease it will be binding upon the property whether it changes

owners or not. If the property is sold the lease is as binding upon the purchaser as it was upon the seller, provided the lease was duly recorded if it was one requiring to be recorded under the law. In like manner, if the original lessor dies the lease is as binding upon those to whom the property descends as a result of his death as it was upon him in his lifetime.

14. Six years ago I leased a house, having a written lease for same, for one year, at $36 per month, paying rent by the month. I have lived in the same place, each year just writing to the owner that I would take it for the coming year, but not having any lease drawn up. Now in case the property is sold during the year can the new owner demand the house or advance the rent?

A. If a tenant goes into possession of premises under a written lease for a year, and then holds over into a new year without renewing the agreement or entering into another one, he gives his landlord an option either to put him out as a trespasser or to adopt him as a tenant for another year upon the same terms in all respects as those named in the written lease. If the landlord accepts rent for any part of the second year, or if he shows in any way that he is willing to have the tenant remain, then he has exercised his option and thereafter both landlord and tenant are bound precisely as they were during the first year under the written lease.

15. A building has been leased for business purposes but the tenant has not taken possession of it as yet. Since leasing it he has discovered that it is unfit for his business because of the thinness of its walls and its generally flimsy construction. Can he escape the lease by showing that the building will be of no use to him and that he entered into the lease before he had sufficient information on these points, which are not visible on a casual inspection?

A. There is no implied covenant on the part of a landlord that a building is in any respect fit for the tenant's use. The tenant must decide this question for himself and at his own risk, unless he can induce the landlord to enter into an express agreement binding himself to consent to a cancellation of the lease in case the building is found to be unsuitable.

16. Can a storekeeper without a lease be compelled to pay more rent at the will of the landlord?

A. The payment of rent raises the presumption that the relation of landlord and tenant exists. If the tenancy is from month to month it may be terminated by the landlord at the end of any month. Whenever the tenancy expires, but not before, the landlord may demand an increased rental for a further term.

17. The lessee of an office, in a building which rents in yearly leases, does not renew his lease but continues to stay, paying his rents regularly; is he bound to stay until the expiration of the time when the lease, if signed, would naturally run?

A. If a tenant leases an office for a year, and then continues to occupy it after the year is over, without any new agreement, the landlord has, at first, a choice of two remedies; he may treat the tenant as a trespasser and remove him, or he may look upon him as a tenant for another year upon the terms of the former lease. If the landlord accepts rent for any part of the new year, as has been done in this case, his election is made, and the tenant and landlord are both bound from that moment for a new term of a year upon the same conditions, as to amount of rent, times of payment, etc., as those that govern the former express lease.

18. I have been a tenant of a certain house for many years, and among other things, some years since, at my own expense had a "Wood Carpeting Company" lay a floor over the original pine floor of the parlors. In leaving the house have I the right to remove said wood carpeting?

A. The tenant may remove the wood carpeting, but must leave the pine floor in as good a condition as if it had been subjected only to ordinary use.

19. Having leased a house, for which I hold lease, I now find out after some months occupying the same that this person had no authority to make lease or contract with me. What shall I do? I don't know any one except the person of whom I leased the house and to whom I have been paying rent. Does my lease stand good?

A. The owner may avoid the lease and hold you, in an action for trespass for the accrued rent, unless by some act of his he has given you reasonable cause to suppose that the person to whom you were paying rent was, in fact, his agent.

If the collector of the rent has turned it over to the owner of the house and the owner has accepted it, that will amount to a ratification of the lease. If the collector has not turned over the rent he is, of course, criminally liable, and, irresponsible as he is, he will probably make an effort to pay you if he finds that he is in danger from the criminal courts. Your wisest course is to pay no more rent to the lessor, get back what you have paid him if possible, and make as good an arrangement as you can with the real owner.

20. A man hires apartments on yearly lease expiring in May. The February previous he dies, his wife assuming the rent of the premises, paying some back rent then due, and during the month of March verbally agrees to remain in the apartments for another year, from the following May, which she continued to do, and promptly paid the rent up to October. She now proposes to vacate the premises. If she does so without the landlord's consent, is she not liable for the balance of the year's rent?

A. The tenant can certainly be held for the whole year. If let, after she vacates, at a loss she must make up the difference, and if it cannot be relet she is liable for the whole rent until the year expires.

21. Certain flats are rented by the month. Must the landlord give a tenant notice, and how long a notice if any, of his wish to have the tenant move out, or of his intention to raise the rent?

A. In such a case as our correspondent puts, where there is no definite agreement for any hiring of the premises beyond a single month, and where the rent is paid monthly each renewal of the hiring by mutual consent is for the definite term of one month. This being the case the landlord and tenant both know when the agreement is to terminate and neither need give the other any notice at all of his intention to terminate the hiring. At the end of any month the tenant may abandon the premises without any warning to the landlord. The landlord may dispossess the tenant, or he may demand an increased rent for the next month, or may insist upon any other condition as a prerequisite of the tenant's remaining in possession, just as he might do if the rela-

tion of landlord and tenant had never existed between them at all. The only case in which notice need be given on either side is that in which the premises are taken for an indefinite term in the first place; then notice is required to define the term and make it certain.

22. Can a landlord prevent his tenant from installing a telephone in his apartments?

A. We are not acquainted with any case in which this question has been brought before the courts for solution. On general principles, however, we are of opinion that the courts, if the lease were silent upon the subject, would allow the tenant to have a telephone against the protests of the landlord only in a case in which the premises had been hired for a purpose which could not very well be carried out, or which generally is not carried out, except with the aid of a telephone. In such a case there would be an implied permission in the lease itself.

23. I occupy an office in a building owned by a corporation. It is let to me to be swept and dusted by the janitor, who is employed by the corporation. He is furnished with master keys which unlock all offices. I go out leaving my door locked, and on my return find a suit of clothes has been taken. The door is still locked. Are the owners of the building responsible for the loss?

A. The owners are not responsible for the loss, nor would they be if it could be proved that the janitor stole the suit.

24. I leased my house unfurnished. There is a furnace in the cellar and range in the kitchen, all in perfect order. There are open fireplaces in nearly all the rooms. My tenant demands that I should provide grates for the fireplaces. I offer to let him have the use of two portable grates, which is all I have. He is not satisfied, but insists upon having at least two more. Has he any right to what he claims?

A. If the landlord let the house as it stands he is under no legal obligation to put in the grates. If he agreed to put the house in perfect order he should furnish the grates.

25. Is a landlord obliged when my lease expires to send me notice

that I have to move on that day, or can he take possession of the same on that day at 12 o'clock without giving notice at all?

A. Where property is rented by the year and the lease expires May 1, no notice whatever is required on the part of either landlord or tenant in order to terminate the occupancy on that day. If the landlord chooses he can turn the tenant out without communicating with him on the subject, and the tenant may move without notice to his landlord, leaving the house vacant.

26. A has rented a house to three different parties, B, C and D. B has the ground floor, C the second and D occupies the third and fourth floors; they all are in the manufacturing business. A, as landlord, has kept the building in repair and has always promptly attended to any call in that direction from his tenants, which fact the latter fully admit. The building has a gravel roof; during a recent storm the drenching rain apparently washed off considerable of the gravel, sand and tar which finally filled up the gutter, blocking the leader, and ultimately the water soaked through the brick walls, dripping upon goods stored on the fourth, third and second floors. The parties concerned have handed in their bills for damages to the landlord. Who should suffer for damage done, the landlord or the tenants?

A. Each tenant in this case must bear his own loss. The landlord is most certainly not responsible for any of it.

27. A railroad corporation has some city real estate condemned against the owner's wish, who is powerless in the matter. What are the lessee's rights in the premises, and to whom shall he look?

A. The lessee is entitled to a just compensation for his loss. In most States the lessee is allowed either to join the lessor in presenting the case to the Commissioners, or to allow the lessor to collect all of the damages and then look to him. In some States the Commissioners are directed to notify all parties having any interest in the land of their time and place of meeting, and to hear them all and assess the damages accordingly. And then "if there are adverse or conflicting claimants to the money, or any part of it, to be paid as compensation for the real estate taken, the court may direct the money to be paid into the said court by the company, and may determine who is entitled to the same, and direct to whom the same shall be paid."

28. In an apartment which I occupy, under a lease having another year to run, I have been for many months unable to obtain water in the bath tub and wash basins during the greater portion of the time owing to the neglect or unwillingness of the janitor to pump a sufficient supply into the tank on the roof, upon which the tenants of the upper floors depend for all water except that in the kitchen, which has to be pumped by the servant. Frequent complaint has been made to the owner. Failing as I have to obtain any redress, am I legally justified in vacating the apartment?

A. When a landlord habitually neglects any duty which the lease imposes upon him for the benefit of the tenant the courts hold the latter absolved from his obligation under the contract.

29. A house is hired from the owner for one year, for which a lease has been signed. Four months after signing of the same the owner of the house dies. Can the lease be annulled, on the ground that one of the parties to said agreement has died?

A. The lease will hold good, no matter what becomes of the owner of the property.

30. Two years ago a society hired a room of me. In the agreement it says: "For five years, with privilege of renewal for five years." At the end of the first five years I want the room myself. Can the party compel me to let them have it?

A. As between the two parties to the contract the lease is as good without record as if it was recorded. The owner must renew it as agreed upon, if the tenants demand it.

31. I let desk room in my office to a company who now owe about eight months' rent, and the representative of the company has not been in my office for the last six months, and he pays no attention to any letters, and I cannot see him because he lives about 100 miles away. I would like to know how I can get his desk and safe out of my office without getting myself liable for damages, they being very much in the way.

A. The most satisfactory and expeditious mode of dispossessing the tenant is by summary proceedings. The tenant should have the legal notice to quit. If he has no dwelling place in town and cannot be found there, the

notice should be posted conspicuously on the premises of which he is to be dispossessed. At the end of the legal period an application for his removal may be made to the proper official. The application should describe the premises, state the facts, and be verified. A precept will then issue and the tenant may be dispossessed in a few days.

32. Where is the liability in case of an overflow arising from negligence of occupant on first floor in allowing the urinal to become stopped by articles accumulating in the same, causing the water to run on the goods in basement and thus damaging the occupant of basement? What has the owner of the building to do with it?

A. Where, as in the case put by our correspondent, a tenant creates a nuisance by his wrongful or negligent use of the premises, he alone is liable. If the defect from which the nuisance arises existed when the premises were let to the present tenant, the landlord is liable jointly with his tenant; or, if the nuisance arose wholly from the tenant's negligence, and the landlord has subsequently renewed the lease without first having the nuisance abated, then he is liable as well as the tenant.

33. Upon tenant vacating leased dwelling house landlord finds parlor ceiling, which had been decorated not long since, badly damaged by water. Tenant admits that the damage was caused by boarders carelessly allowing water to overflow from basin above. Also numerous panes of glass in doors and windows broken. What is tenant's liability to repair the damages?

A. A tenant is equally liable for damages to the premises caused by himself and for those caused by a sub-tenant or by any one occupying the premises with his permission. If he fails to make repairs in accordance with his agreement, the owner may make them and hold the tenant liable. "Good repair," "good condition," and the like terms are construed with reference to the age, class and uses of the building to which they relate. A tenant is not bound to leave an old building in as good repair as if the building were new.

34. A leases a building from B. One clause in the lease is to the effect that the building is to be properly insured by A at A's expense.

Accordingly, A insured the building at its full value, having arrived at said value by securing an appraisal of the building from a builder of recognized authority among insurance people. B demurs at the amount of insurance placed, claiming that his builder places the value higher, and demands that A give him an agreement to the effect that in case of fire A replace the building as it was before the fire. A claims that he has used his best judgment toward properly insuring the building and has therefore complied with that clause of the lease, and though his (A's) intentions are to replace the building in the event of fire, B cannot compel him to sign the agreement referred to. Could B's claim be legally sustained, and has A not done his full duty in the matter?

A. The landlord cannot, in this case, compel the tenant to sign any other contract. If the building is not properly insured at present, the landlord, on proof of that fact, may put the tenant out of possession of the premises, if the lease so provides; if there is no such provision in the lease then the landlord on proof that the building is not properly insured may recover of the tenant such damages as the failure to insure may have caused him; or the landlord, if he can furnish proof that the building is not properly insured, may insure at his own expense, for the deficiency and then compel the tenant to repay the cost of such insurance. The phrase "properly insured" is an unfortunate one, and we know of no reason to suppose that it will be held to mean "insured for its full value."

35. A leases to B a building in this city for manufacturing purposes, in which are two freight elevators without guards at either of the openings. Who is responsible in case of accident to any one on account of the absence of the guards, the owner or the lessee?

A. It is the duty of all persons owning buildings to keep the elevator wells protected by sufficient guards at all the openings. This being the case the courts hold that the owner who neglects this duty is liable to any one injured by his negligence, even including the tenant.

36. A rents rooms monthly to B, who sublets them to C, together with furniture for four months expiring June 1. A, the landlord,

serves notice on C, but directed to B, that the rooms are wanted May 1. B's address is unknown, as he is out of town, to return the latter part of May. We understand the lease is void after May 1. Are we right?

A. We assume that B under his lease has no power to control the premises beyond May 1. It is clear then that C must vacate them at that date. If C hired the rooms already furnished he has only to move out on May 1 and leave B's furniture to the care of A, who may remove and store it, subject to the order of its owner. C can be compelled to pay his rent to the landlord for the time he is in possession, but is responsible no further, and this is the extent of B's liability also. If C pays this rent, B need take no action.

LARCENY.

1. It seems to us that anyone could remove cases from our sidewalk and carry off the same without penalty, and that we could only recover our property through civil process, according to enclosed ruling.

A. This question has reference to a recent decision of a city magistrate, rather widely commented upon, wherein he refused to hold upon a charge of larceny a prisoner accused of having picked up a package from the sidewalk in front of an express office, and started to walk away with it. We have not all of the facts before us and we have no reason to assume that the magistrate's ruling was in any way objectionable. We do not understand him to have held that the package was lost. All he seems to have decided is that, under the facts of that particular case, the man then before him might reasonably be supposed to have thought that the package was lost. All presumptions are in favor of the innocence of a person accused of crime, he must be shown to have had a criminal intent before he can be convicted, and if there is reasonable ground to suppose that he may have thought the package to be lost, he is not to be punished for having mistaken the facts.

LEASES.

(See also Landlord and Tenant.)

1. Should A lease a suite of offices from B, who has a lease for a period of years for the entire building, what would be the result should B sell or transfer his lease to another party? Would there be any question about A's lease being in force and his holding possession until its expiration?

A. A sub-tenant or the assignee of part of a lease is bound by his own contract and also by that of the person under whom he holds. If he does not perform his own covenants he may be dispossessed; if the person under whom he holds does not perform his covenants both of them may be dispossessed. The position of the under-tenant or assignee of part of the premises is as safe, however, under one to whom the whole term may be assigned as it was in the first place. The assignee of the whole term can take no more than his assignor had to grant, and what the latter had to grant was only what was left after the interests of the sub-tenant or assignee of part of the lease was taken out of the grant from the original landlord.

2. Suppose I have a five years' lease upon a dwelling house; the lease is not recorded. Suppose the owner of this house sells it while I am living in it, can the new owner dispossess me before the termination of my lease?

A. The occupant of the house can retain his lease, even if it is verbal for the current year unless the premises are sold under foreclosure, but after that if his lease is not in writing and recorded before the sale, the purchaser can claim possession.

3. I hold a written lease for fifteen months, but it has no seal and has not been acknowledged before a notary public, nor is there any witness to the signature. The person who signed the lease is merely an agent of the owner. Is this a binding agreement?

A. A lease of real estate for any period longer than a year, must be in writing and must be signed by the person by whom the lease is made or his duly qualified agent. But

the writing does not require a seal, nor need it be witnessed or attested before a notary public.

4. Is a lease on a dwelling house considered expired in case of the death of the pater familias, who signed such document?

A. A tenancy at will is terminated by the death of either the landlord or the tenant, but this is not true of a tenancy from year to year, or for any fixed and definite term. The lease is an asset of the estate, in case of the tenant's death. On the other hand, the liability for rent, as the rent falls due from time to time, is a liability of the estate upon a contract, which was made by the deceased, but which did not depend upon any personal peculiarity of his, and may be carried out by another as well as by the deceased himself; the rule in such cases is that the estate is to have the benefit of the contract and to be bound by its obligations and burdens.

5. I hold a lease for a term of years on a building in which these words occur: "And it is further understood that the party of the second part is to have the privilege of a further term of one year upon the same terms and conditions." Can there be more than one interpretation of those words?

A. One of the terms and conditions upon which this lease is taken is the one here quoted providing for a renewal at the option of the lessee. The new lease is to be upon the same terms and conditions as this one. A question which may arise, therefore, is whether the new lease shall contain this clause providing for a further renewal, it being, according to a strict construction, included in the phrase "the same terms and conditions." This question has several times been before the courts in construing leases containing covenants similar to this, and the decisions have not always been uniform. But the courts have now finally established the doctrine that such a clause provides for only one renewal and that the new lease need not contain a similar clause unless the original lease expressly stipulates that it shall contain it.

6. Why are all leases written for ninety-nine years and never for one hundred years?

A. We are not sure that leases are never made for one hundred years. We are sure that they are often made for a much longer term. There is a statute in most States against an indefinite or very long suspension of the power of alienation of property, real or personal; that is, a statute declaring any arrangement void which undertakes so to tie up property that title to it cannot be transferred for a long period of years. Such long suspension of the power of alienation is held to be contrary to public policy. Ninety-nine year leases are very probably based upon some decision of the courts that a lease for one hundred years for a lump sum was, in effect, a suspension of the power of alienation beyond the term permitted by statute. A lease for ninety-nine years, upon the same conditions, would be almost equally objectionable; however, a lease for any number of years is valid if it is properly drawn.

7. I rented part of my house to a man for one year, for which the usual lease was signed, rent payable monthly in advance. He paid the first month's rent and then notified me that he had decided to move, giving as reason that his wife could not get along with one of the members of my family. Is he held by the lease?

A. The reason assigned by the tenant is not sufficient to vacate the lease, or to release him from responsibility.

8. A slight fire damages two of the largest rooms in a leased building, occupied by a club. Are they entitled to any reduction in rent for the time the two rooms remain untenantable?

A. The lessee of a building rendered untenantable by the action of the elements, without his action, may surrender the lease, paying rent up to the date of his exit. But he cannot retain his lease and urge any legal claim for damages for his loss or suffering by reason of the fire or other casualty.

9. A rents store to B for three years; at expiration of said time, nothing being said in regard to it, B continues in possession for eighteen months longer, paying the rent monthly, when he then refuses to vacate, claiming the store is his for six months longer or to the end of his year. Is he correct?

A. The subject of this inquiry is covered by statute in Connecticut. Section 2,967 of the Revised Statutes of that

State provides that "no holding over by any lessee, after the expiration of the term of his lease, shall be evidence of any agreement for a further lease." Sections 1,355-65 prescribe a method by which any landlord by giving fifteen days' notice from the time of the expiration of the lease or from any subsequent date, may have summary process for removing the tenant.

10. I occupy the upper floor of a house which is rented to me by the party occupying the lower floors and to whom the whole house is let. I pay my rent monthly and in advance. I paid my rent for the month of April on the 1st inst., and on the 18th inst. said party notified me that I would have to leave on the 1st of May, notwithstanding that he has rented the house from the owner for another year. When I went to see the party about renting the floor last February I told him explicitly that I did not care to be moving in and out, and thereupon I was told that they would take the house for another year from the 1st of May next, if I decided to take the rooms, because if the rooms were not rented they would be compelled to give up the house, as they could not afford to pay the rent for the whole house, and that they would remain in the house as long as I would. Am I compelled to leave?

A. A verbal lease for a year to come, when it can be established by legal evidence, is as good as a written contract. If our correspondent can prove that the lessee of the house agreed to rent him the upper floor for the year from May 1, in case he succeeded in obtaining the premises from the landlord for himself, then this will hold, and the subtenant cannot be expelled by the first tenant until the next year expires.

11. In the event of foreclosure on property, does this cancel the existing lease?

A. After an owner of real estate has mortgaged it to one person he cannot execute a lease to another which will in any wise interfere with the rights of the mortgagee or of any purchaser at foreclosure. It is equally true that after an owner has leased his real estate to one he cannot execute a mortgage which will not affect the lessee's rights. A mortgage and a lease upon the same real estate, in other words, take priority from the date of their execution. This, how-

ever, is upon the assumption that the mortgage is duly recorded, and that the lease is also recorded.

12. A leases a building from B. The lease expires May 1. Has B the right to place a "To Let" sign on the building without the consent of A?

If a tenant leases the whole of a building, not merely an office or apartment in it, he takes the outside of the walls as well as the inside. Neither the owner nor any other person except the tenant has any right, without permission of the tenant, to make any use whatever of the outside of the wall, or of any other part of the building or grounds. If the landlord wishes to have a right to put up a "To Let" sign while the term of the tenant continues, he must reserve that right in the lease, as is very commonly done.

13. A lease being drawn was filled in on a printed form with typewritten words. The lessee's name in the body of the lease was written D. E. Feles and the lease signed D. G. Fele. The lessee has occupied the premises a number of months, but now does not wish to abide by the terms of the lease. Can the owner compel her to do so?

A. The mistake in the middle initial in this case is not a matter of any importance; any mistake in a Christian name may always be corrected by parol evidence and besides the courts, as a rule, pay no attention to the second Christian name. The mistake in the last name is somewhat more serious. But the lessee has acknowledged the validity and sufficiency of the lease by going into possession and making use of the property, and there is probably no real question as to the identity of the lessee. When this is true the courts will usually allow a correction of the mistake.

14. A claims that any person who hires a store, stall, or any other place by the month, is subject to an increase in rental every month, and may be dispossessed therefor. B claims that a landlord has the right to raise the rent only on May 1. Who is right?

A. As long as a lease is in force the landlord can neither raise the rent nor dispossess the tenant if the latter abides by all the terms of his agreement, express and implied.

Whenever a landlord has the right to raise the rent he has also a right to put the tenant out of possession.

15. I rent a room in an office building from month to month. Discovering a leak I notify the janitor, who secures the services of a tinsmith to make the necessary repairs. The work is badly done and water enters the room during the night, destroying a large part of my stock of fancy paper articles. Have I cause of action against the owner of the building?

A. A landlord who leases different parts of his building to different tenants is bound to keep in repair those parts which he retains under his own control for the benefit of all the tenants, or of several of them. This includes the roof, the common stairways, walls, etc. If the landlord of such a building knows that the roof, or any part of the building under his control, is in need of repairs, he must make the repairs with reasonable promptness. If he fails to do so, or if, as in this case, he undertakes to make repairs, but does not do it properly, he is liable to his tenants for any loss resulting from the need of repairs. When a tenant knows that his goods are in danger by reason of a leaking roof he is not at liberty to leave them there deliberately, and look to the landlord for any resulting damage; the tenant must first do all that he can do to prevent any damage at all.

16. A rents a house which has been unoccupied for some time, and is in bad condition, from B, in October. B asks $30 a month, but on A's agreeing to do half the repairs necessary consents to accept $25. The house is to rent from October to May at $25, with the privilege of a year's lease from that date at the same rate. A does his share of the repairing, and a great deal besides which is necessary to make the house habitable. In February B notifies A that the house is now in a condition that will justify a rental of $30 a month. Can A be made to pay?

A. The tenant can remain in possession of this building, if he chooses to do so, until the end of the time to which his option runs, that is, until one year from the next May, if the term began in October, and he need pay no higher rent than $25 a month for any part of that time. His contract clearly so provides, and there is no reason why it should not be enforced. The contract was made with an agent of the

landlord, not with the landlord himself; but, even if the agent was not authorized to make an agreement of this kind, the landlord is bound by it now because he has ratified the agent's act and has accepted benefits under it. It is a rule of law that an unwritten contract cannot be enforced if more than a year is to be consumed in its performance, and the landlord may hope to escape his obligation under that rule. The rule does not cover this case, however, because it applies only in those cases in which the contract cannot be performed within a year.

17. A signs an agreement to rent a portion of a building from C for two years, rent payable monthly. Before the expiration of one year A decides to move. Is A liable to C?

A. If A signs a valid agreement to rent a portion of a building from C for two years, rent payable monthly, A is bound to pay the stipulated rent monthly during the two years whether he chooses to occupy the building or not. If the tenant moves out of the building before the end of the two years the landlord is not bound to protest in order to preserve his right to demand the rent; the tenant is not bound to occupy the building, but he is bound to pay rent for it unless the landlord chooses to release him. The landlord's release may be implied as well as express; he may indicate his willingness to release the tenant by accepting the keys of the building without protest, by looking for another tenant, or in other ways; but if he does not in some manner show a willingness to waive his right to demand the rent he may collect it for the whole term by suit.

18. A rents from B a house for two years. B will not give a copy of the written lease, although A paid part, or his share, of the cost of having it drawn. Does this lease hold good in a court of law on A's side?

A. If A has a lease for a term of two years on a building belonging to B he can enforce all of his rights under the lease by proving what its provisions are, whether he is in possession of a copy of it or not. If any dispute arises under it, and comes before a court for settlement, A can compel B

to bring the lease into court. If B has lost or destroyed it that fact will raise a presumption against his own good faith in a case of this kind; A may then give oral evidence as to the contents of the lease, and may compel B to do the same.

19. A agrees, through a broker, B, to rent to C certain premises and has leases drawn up and signed, and sends them through B to C. At C's request they are left for inspection. B calls two or three times to get the signed copy due A, but is put off for different reasons. A week after the signing and delivery of the lease forms C goes into the hands of a receiver. Application is made to the receiver for the forms signed by A, but he refuses to give them up, and notifies A that if the premises are rented to other parties he will hold A responsible. No money consideration of any kind has passed between the parties A and C. Has either C or the receiver any legal standing?

A. A lease is of no validity until it is delivered unconditionally and with the purpose of having it become effective as a lease. If it is turned over to the lessee merely for his inspection, or for any purpose except to give him a right to hold the property under it, the lease does not become binding until another delivery is made or until the condition is removed under which this delivery has been made, and the delivery is thus changed in an absolute and unconditional act.

LEGACIES.

(SEE ALSO WILLS.)

1. A is bequeathed, say $25,000, by B, principal becoming his property July 30. The will stipulates, however, that he shall not receive principal until he shall have attained the age of 25 years. No provision in will made for interest. A contends that interest should be paid him by executor, from July 30, so soon as he can give valid receipt, and that he should receive interest at proper intervals. Executor is in doubt if interest belongs to A at all, as he would then pay him in excess of the amount bequeathed. Please render your opinion.

A. It is a general rule that specific legacies go to the legatee with whatever interest, income or product may have accrued upon them since the testator's death; but a general legacy payable at a future fixed date, or upon the happening of a future contingency, carries no interest in the legatee's

favor as a rule, until the date arrives or the contingency happens. There are some exceptions to this rule, as, for instance, where the legatee is a minor and no other provision has been made for his support.

2. Should an executor pay legacies one year after probate or one year after date of death?

A. The law in many States defining the rights and duties of administrators and executors provides that no legacies shall be paid by any executor or administrator until after the expiration of one year from the time of granting letters testamentary, or of administration, unless the same are directed by the will to be sooner paid.

3. By will a widow is left the use of realty during her life; at her death the same is to be divided equally among the children. Should any child die that share is to go to his or her issue. A son dies leaving a son; the latter in adjustment of a debt conveys to his creditor his interest in his grandfather's estate. This grandson dies leaving a widow and child. In final settlement of the estate who gets the share, the widow and child, or the creditor?

A. The law always favors the vesting of legacies as far as possible. In the case put by our correspondent the widow had the life use of the property. At her death it was to go to such of her children as were then alive and to the sons and daughters of such of these children as might have died during the lifetime of the widow. As long as she lived, therefore, and as long as any one of her children lived also, it was a matter of doubt whether the share of that child would come to him at her death, or whether it would go to his child or children because he himself had died before the widow. This was a doubt which ceased to exist as soon as any child of the widow died during her lifetime. Then it became certain that that part of the property allotted to this child was to go, upon the widow's death, to his child. No provision was made in the will, even if such could have been made, for suspending the absolute ownership of the property, or its vesting, beyond this point. Upon the death of a son of the widow, leaving one son, a share of the property vested absolutely in the latter, his right of possession

was suspended but there was no longer a doubt of his ownership. His transfer of this property to his creditors, if there was no fraud involved, is valid, and they can hold it as against his heirs or personal representatives.

4. A widower dies in South Carolina without issue and in disposing of his estate by will he leaves everything to his nieces in unequal proportions to the exclusion of his sisters, brothers and nephews with the exception of one brother to whom he left a small legacy. Have the nephews any right to contest?

A. There is nothing in the statutes of South Carolina which would invalidate the testamentary disposition of property here described. If it can be shown that the testator was unduly influenced, or was mentally incapable of making a will, his disposition of the property may be set aside; but the fact that he preferred his nieces to other relatives is no objection to the validity of his will.

5. A, a widower, makes his will, bequeathing his estate equally among three persons, namely, two sons and a granddaughter. One son dies, leaving a widow, but no children. Immediately after this A dies, without altering his will in any way. How should the estate be divided?

A. When one who is a legatee or devisee under a will dies before the testator the usual rule is that the legacy or devise lapses. The only exception to this rule arises in the case of a legatee or devisee who is a child or other descendant of the testator, and who leaves at his death a child or other descendant of himself who survives the testator; in such a case the legacy or devise does not lapse, but rests in the surviving child or descendant, as if the legatee or devisee had survived the testator and had then died intestate. In this case the legacy lapses and the testator is to be held as having died intestate as to that part of his property. The legacy to the surviving son and that to the granddaughter take effect under the will, and the remaining third of the property is to be divided as if the testator had made no will at all.

LICENSES.

1. There is on my farm a spring of water that rises about four or five rods from the boundary line and then flows on to a neighbor; that neighbor has a lead pipe to the spring that supplies his house with water; that pipe was laid to the spring about forty years ago, permission being given by my father, now deceased. I do not know of any written contract or deeds. I want that spring for my own use. Have I any right to it?

A. Even if the water issuing from the spring upon our correspondent's land were conveyed to that of the neighbor by natural courses and without the intervention of a pipe, our correspondent would not be entitled to divert the water to his own use. The fact that the neighbor in this case had long been allowed to convey the water to his land by pipes would strengthen his case.

2. A owns a woolen mill, which has ceased running for some years, and the right to draw water to furnish power for a woolen mill from a dam owned by B. Will this right enable A to sell and deliver this amount of water to another party owning a mill further down the stream?

A. In such a case as this A may or may not be entitled to deliver to another mill-owner the water for which he no longer has any use himself. The question can be determined only by a study of the deed conferring the grant and a consideration of the conditions surrounding its execution. The person who made the grant to A may have had some personal reason to wish that A's mill should be kept running, which did not apply at all in the case of the other mill. Whenever it appears that the water privilege is simply a given quantity of power, not limited to a specific purpose, the water may be appropriated to any purpose whatever, and may be used by any person to whom it may be assigned or transferred. If the use described in the grant is clearly limited to a particular mill (the name of the mill not being used merely incidentally) then any substantial change in the place or manner of using the water will not be allowed.

3. If we send a salesman to a village where they have an ordinance

for license for peddlers by wagon, and we afterwards sent the goods by wagon to such village, can they make us pay peddlers' license?

A. Selling goods from a traveling wagon, whether by wholesale or retail, would come within the legal definition of peddling. The sale of goods by sample, to be delivered by the owner's wagon, is not clearly within the description, but it would doubtless be so held by those who were interested in suppressing such sales.

4. A has from early life devoted much time to the study of chemistry, but has never graduated or taken any college degree. A claims that while he has no right to compound medical prescriptions or give an authoritative certificate of analysis, yet that he is within his rights to designate his occupation as a chemist. Is he correct in this opinion?

A. No matter how skillful a chemist or pharmacist any person may be, he has no right to compound medical prescriptions until he has been duly licensed to do so. The statute is intended wholly for the protection of that part of the public for whom prescriptions are written or medicines prepared; accordingly, it does not forbid an unlicensed person to call himself a chemist or to act as such, provided he leave the compounding of medicines to others.

5. A block consisting of four buildings under one roof, separated only by partition walls and owned by four different persons, were heated from a common heating plant through one pipe attached to a street main. This connecting pipe enters the block of buildings through the basement of one of the middle rooms or buildings. Two years ago this property was sold and no reservation was made in the deed regarding this heating attachment. The owners of this part of the block now desire to sever the connection with the other properties on each side and establish independent relations with the heating company, and wish to know what their legal rights are in the case as regards severing the pipes leading from their basement to the other buildings?

A. If the owner of one building has allowed adjoining owners to run pipes through his building, and the arrangement is founded upon a contract supported by a consideration, the contract must be consulted in order to learn how, if at all, the removal of the pipes can be secured. If there was no contract, but it was simply a matter of accommodation on the

part of the property owner, he is at liberty to withdraw the permission whenever he sees fit to do so, and order the immediate removal of the pipes; some regard must be had, of course, for the convenience of the adjoining owners; they have been permitted to run the pipes in this way and the arrangement cannot be arbitrarily interfered with until they have had notice and a reasonable opportunity to protect themselves against loss.

LIENS.

1. I am suing a party for work done on his house, and expect to win my lawsuit, and therefore shall put a lien on his house. What effect will the lien have? Can it force him to pay me at once? I am told that by putting the equivalent amount in cash into the hands of the Secretary of State in New Jersey he will thus be able to dispose of and sell his house, and thus prevent me from collecting a cent. Is that so?

A. If a lien exists in favor of a plaintiff upon the real property of an unsuccessful defendant, and the latter deposits cash with any public officer in order to have the burden taken off the real estate, the lien immediately attaches to the cash and the plaintiff is in as good a position as before.

2. A rents a flat from B, and buys his furniture on credit from C. At the expiration of one month A decides to move, and surrenders the keys to B, the landlord, but leaves the furniture in the rooms. Two weeks later C calls for the furniture, and B demands payment for two weeks' storage, which C refuses to pay. Can B hold the furniture?

A. The landlord has no lien on these goods and is not entitled to withhold them from the owner. The law gives a lien to certain classes of persons, including warehousemen or other persons lawfully engaged in the business of storing goods.

3. Jones holds a mortgage on Smith's land. Smith builds a house. The builder puts a lien on the property. Will the mortgage have to be satisfied before the builder's lien?

A. It is held that any one entitled to a mechanic's lien has no greater equities, before his lien is filed, than other general creditors, and that he is affected by all the equities

existing at the time in favor of those dealing with his debtor. Accordingly, a mechanic's lien attaches only to the estate and interest of the debtor as it then exists, and it does not take precedence of a prior mortgage.

4. I have sold lots with builder's loan and taken purchase mortgage for price of property and cash advanced included, what precedence has a mortgage thus given to a builder's lien put on property prior to foreclosure of said mortgage?

A. Mechanics' liens are preferred as prior liens "to any conveyance, judgment or other claim which was not docketed or recorded at the time of filing the notice of lien, and prior to advances made upon any mortgage on the premises after the filing of such notice of lien, and prior to the claim of any creditor who has not furnished material or performed labor upon any land, or toward the erection or improvement of premises, described in said notice of lien, and which have been assigned by the owner, lessee, or person in possession thereof, by a general assignment for the benefit of creditors within thirty days before the filing of the notice of the lien.

5. A contractor is building a cottage for me and, instead of making steps or stairs ten feet wide as per specifications on the plan, he made them fourteen feet wide or more. On account of these wide stairs he omitted a part of the veranda besides. Has the owner a right to withhold the last payment until the contractor has altered the steps and added the missing part of the veranda?

A. As between the owner of a building and the principal contractor himself, the latter is not entitled to a mechanic's lien unless he can show that there has been a substantial performance of his contract; a substantial performance, as the term is here used, is consistent with only such omissions or deviations from the contract as are inadvertent and unintentional, not due to deliberate bad faith, do not impair the structure as a whole, can be remedied without material damage to other parts of the structure in tearing down and rebuilding, and may equitably be paid for by deductions from the contract price. The deviation from the contract in our correspondent's case clearly does not fall within this

description. When stairs are made wider by about 50 per cent. than they should be, and a material part of the veranda is thus cut off, the deviation cannot be described as unimportant, and it is hardly possible that it should have been inadvertent and not due to deliberate design. The owner may refuse payment until the defect is remedied. If the contractor levies a lien upon the building the owner can easily show that the builder was acting without warrant of law and so place the costs upon him and also hold him liable for any resulting damage.

6. A manufacturer takes materials to be finished up at an agreed price for labor and expense, to be paid for in thirty days after delivery. In the event of the owner of the material failing to pay could not the material on hand, not finished or in process, be held by the manufacturer as an offset to the amount due?

A. Anyone who takes the property of another into his possession for the purpose of repairing it, or increasing its value in any way, has a lien upon the article for the value of his work. If his charges are not paid he may enforce his lien by a sale, after proper notice and advertisement. Part of the articles may be delivered up, as in this case, and another part, finished or unfinished, may be held until the whole bill is paid, or may be sold for payment of the whole bill.

LIFE TENANCY.

1. As co-executor of an estate the income of which is to be paid out to the widow of the testator during her lifetime, the estate at her death to be subdivided among her children, how are the legal expenses incidental to the control of this estate to be charged?

A. When property is left by will to one person for life with the absolute ownership over to others upon the death of the first holder, the intent of the testator must be taken to be that those who are to succeed to the property finally shall take it free of any diminution in value except such as arises from inevitable wear and tear. Accordingly, most of the expenses named by our correspondent are to be borne by the life tenant. Legal expenses, if they are incurred in the

preservation of the estate itself, may properly be charged, in large part at least, upon the estate.

LOANS.

(See also Banks—Mortgages.)

1. I gave a person a check for $750 as a loan. I took no receipt but have the check voucher indorsed by the debtor. When will this loan outlaw? Can I hold the debtor for the principal with 6 per cent interest added annually? How can I prevent the outlawing?

A. When money is loaned, and there is no agreement as to the date when the loan is to fall due, it is payable on demand, and the statute of limitations begins to run immediately. If there was no agreement for interest the debt does not bear interest except from the first day on which payment was demanded; the debtor has been in default from that time and interest may be collected by way of damages.

MAIL.

(See also U. S. Postal.)

1. Can a debtor be requested to make payment of a sum due to the writer by postal-card without making himself liable to a civil or criminal action?

A. The amendment to the law forbids the use of a postal-card with intent to annoy the person addressed. But a plain request for the payment of a sum due, with no threat or epithet, or word designed to reflect upon the debtor, is not a violation of the law.

2. What is the gist of the Act which forbids the mailing of a dunning postal card?

A. It provides that "all matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal-card upon which, any delineations, epithets, terms or language of an indecent, lewd, lascivious, obscene, libelous, scurrilous, defamatory or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another may be written or printed,

or otherwise impressed or apparent, are hereby declared non-mailable matter, and shall not be conveyed in the mails. * * * Any person who shall knowingly deposit, or cause to be deposited, for mailing or delivery, anything declared by this section to be non-mailable * * * shall, for each and every offense, upon conviction thereof, be fined not more than $5,000, or imprisoned at hard labor not more than five years, or both, at the discretion of the court." This statute does not absolutely prohibit the sending of "dunning" postal cards through the mails. It is held that "a postal-card demanding the payment of a debt, stating that it is long past due and that a collector has called for it several times, but in respectful terms and with no intent apparent to put it in such form as to attract public notice or make it offensive to the person addressed, is not within the act." See 40 F. R., 664. But the card is unmailable if it contains a threat to sue, or to put the claim into the hands of a lawyer for suit; and an envelope is unmailable which bears upon its face in very large type the name and address of a debt-collecting agency.

3. C writes to B for a description of a large tract of land. A receives C's letter and opens it; instead of handing C's letter over to B, A tells his clerk to answer it and get all the information he can, holding B's letter and keeping him ignorant of the contents. What sort of a position is A in?

A. If A opens a letter addressed to B, and then withholds the letter from B and so causes any damage to the latter, B has a good basis upon which to base a suit for such damages against A. It is highly probable also that A has made himself liable to criminal prosecution under the statutes either of the United States or of the State.

4. Various shipments of perishable goods are made on a certain date, "to order, notify," and bills of lading, drafts and invoices are mailed that night; the passenger train on the same road carrying the goods by freight is wrecked and the mail is burned. The banks do not get the drafts and bills of lading, nor do the consignees get the invoices. The goods being perishable are damaged considerably before arrangements can be made to have delivery accomplished. Please

advise if this is not as good ground for a claim against the railroad company as it would have been had the goods been delayed and damaged while going by freight.

A. Railroads carry the mails under contract with the government, not with the individuals who write or post letters. The letter-writer pays the government to carry his letter to its destination, and if this is not done he has only the government to deal with in the matter. If the letter is, in fact, transported over a railway line, the line is an agent of the postal department and is responsible to it, but the railway company has made no contract with the several owners of the mail matter, and it cannot be held liable by them for any default in its carriage of the mails.

MARRIAGE.

(See also Husband and Wife.)

1. The laws of Germany do not forbid a marriage of uncle and niece, while the laws of the State of New York not only forbid such a marriage, but designate it as an incest and a crime. Lately a married couple came to the United States and settled in New York; they are uncle and niece and were lawfully married to each other in Germany, whence they immigrated. Is their marriage void or voidable?

A. The general rule of law is that a marriage which is valid where it is contracted will be held to be valid in other countries though it could not have been lawfully made in those countries. The two principal exceptions to this rule are those enforced in the case of polygamous or incestuous marriages; as to the latter class, however, it is to be noted that the objection is founded not merely upon the statute of the State refusing to recognize the marriage as valid, but upon the general view of Christendom upon the subject. It follows, accordingly, that a marriage lawful where it was contracted will not be declared invalid in another State merely upon the ground that the parties were within the degree of relationship within which a lawful marriage could not take place in the latter State; the relationship must be so close that marriage within it is condemned by the common consent of all Christian nations.

MARRIED WOMEN.

(See also Husband and Wife.)

1. Can a married woman whose husband has left her, there being no legal separation, be held personally liable on a lease which she has signed individually?

A. The law puts married women upon the same level as unmarried women, so far as concerns their right to transact business, hold property and enter into binding contracts. The husband is still liable for the support of his family, but the wife may make herself liable by express agreement. If both husband and wife sign the lease of a dwelling house the husband alone is bound unless the wife expressly undertakes to charge her separate estate; but if the wife alone signs the lease she is liable.

2. Please state if you know of any restriction on a married woman's testamentary power.

A. A woman who has a husband, child, or parent living, is prohibited by the law of most States from devising or bequeathing more than one-half of her estate to any benevolent, charitable, literary, scientific, religious or missionary society, association or corporation.

MASTER AND SERVANT.

(See also Employer and Employe.)

1. Some time ago we bought a delivery wagon, upon which our firm name appeared. This wagon was our property until it became the property of the contractor who did our carting. He uses this wagon, to which there is no objection on our part, but we do object to our firm name being left on the wagon. He refuses to remove it. Would we be liable for damages in case of an accident?

A. When any damage is done by a wagon in the streets the driver or other person whose carelessness may have been responsible for the damage is always liable. No attempt is made, as a rule, to hold the driver liable in damages, because he is not supposed to be able to pay. The only other

person who may be looked to is that person who is responsible for allowing the driver to handle a team in the streets, the driver's employer, in other words. The wagon may actually belong to some third person, and that person will have no liability in the matter unless the driver is in his employ and under his control.

2. If a laborer, engaged by the month, is kicked by one of the horses which his employer has given him orders to use, can said laborer recover damages by an action at law when the owner has knowledge of a previous act and the laborer has used reasonable precaution?

A. In the case here put the master is liable for the injury done to the servant if he knew that the horse was vicious, while the servant did not. If the servant knew as well as the master of the horse's propensity to kick, then his remaining in the place might amount to an implied agreement to consider the danger from this source as one of the risks which he took upon himself voluntarily and for which he was paid.

3. A is employed at $2,000 per year. He is not paid at regular intervals, but draws money as he needs it; he could draw his full salary each month, though, if he chose. Can the employer discharge him before the year is out?

A. It is held that a hiring at so much a day, month or year does not necessarily constitute a hiring for a day, month or year. If no time is specified it is a hiring at will, and either the employer or employe may put an end to it at any time without notice; the agreement that the employe is to receive so much per year simply fixes the basis upon which he is to be paid for such time as he chooses to remain or the employer chooses to continue him in the employment.

MERCANTILE AGENCIES.

1. If a confidential report of a mercantile agency gives to a business concern a rating of $4,000 with good credit, but fails to publish same rating in the usual way in its monthly or yearly books, is said mercantile agency doing justice to its incorporated rights and duties?

A. A mercantile agency is entitled to send out confi-

dential reports and to publish the usual monthly and yearly reports besides. It is not bound to incorporate the same matter in both, though the statements that are made should not conflict, of course. If a mercantile agency issues a confidential report giving a merchant a certain rating, and then later fails to include that merchant's name in its more public reports, the merchant has no remedy unless he can show that the act was maliciously done and that it has resulted in damage to him.

MINORS.

(See also Infants.)

1. Please inform me when a girl becomes of age in the United States, and if each State has its different laws in the case.

A. The common law of England, from the remotest time, has fixed 21 years as the period of absolute majority for both sexes. This rule holds in all parts of the United States, except where it has been changed by statute.

MISCELLANEOUS.

1. A society received a communication from a member asking how much he owes for dues. The acting secretary took the letter and answered it, saying the amount was $20, signing a fictitious name. The member sent the amount by money order, which the acting secretary had cashed and kept the money until it was found out, when he refunded the same, after which the society expelled him. Could the Postoffice authorities or the society at that time, or can they now have him indicted for forgery?

A. It was not a forgery, but the young man could have been prosecuted if proceedings had been taken in time, for obtaining money under a false pretense.

2. Can I vote, my birthday falling on election day, November 6? I have asked the opinion of several parties, but their answers were various and unsatisfactory.

A. If our correspondent was born nearly 21 years ago on the 6th of November, he is legally of age at the midnight that closes the 4th day of next November, and has

a whole day to spare before the 6th, which is election day. If his residence, etc., permits he can vote. "A person is of full age at the beginning of the last day of his 21st year." The decision is founded on very ancient authority, which established the principle that the law recognizes no parts of a day. Therefore if a man is 21 when the last day of the 21st year has ended, he is 21 when it begins. This was the rule of the old Roman law, and antedates by many years the Christian era. It was the recognition of this rule which made the old law writers, in speaking of a year, put it as a year and a day. Their theory was that in law the last day ended when it began, and hence it took legally a year and a day to round out one revolution of the earth around the sun.

3. Has Congress jurisdiction over navigable waters of the United States and has a corporation a right to construct a bridge over any State waters where it necessitates the putting in of abutments which will make navigation dangerous, without the consent of both the Legislature of the State and Congress?

A. The United States Supreme Court has decided that "Commerce includes navigation; and comprehends the control for that purpose and to the extent necessary of all navigable waters of the United States which are accessible from a State other than those within which they lie. For this purpose they are the property of the nation, and subject to all the requisite legislation of Congress." "This right includes the power to remove all obstructions." "It is a right without regard to the ebb and flow of the ocean." "Congress may regulate or remove all bridges over such navigable waters where navigation is affected." "The States control all such streams, etc., for municipal purposes."

4. In the blank I use for certificate of protest and notice of dishonor is the clause: "I hereby certify that on the same day and year above written notices of demand, etc., were put into the Postoffice at St. Paul." Is it a good mailing and in conformity to the clause to drop in a United States mail box on the street corner, or at a branch office in the city?

A. In New York, Minnesota and several other States

the rule as to personal service has been changed by statute, so that in certain cases a notice may be served by depositing it in the postoffice. Where this rule is in force it is held that if the notice is properly addressed it will be sufficient although deposited in a postoffice other than that at the place of payment, and so if it is deposited in a street box provided for the reception of letters under an act of Congress.

5. Is it contrary to the laws of any State for the seller of merchandise to give coupons with sales, same to be redeemed by the seller after a specified number of sales have been effected?

A. Several States have laws upon their statute-books making it a misdemeanor to issue what are known as trading-stamps, that is, coupons to be given by merchants to their customers and to be redeemed, not by the merchants themselves, but by the central agency issuing the stamps in the first place. The trading-stamp law of some States expressly declares that it shall be allowable for a merchant to issue coupons to his customers to be redeemed by himself. This probably arises from the fact that a previous law attempting to make such an act a misdemeanor had been declared unconstitutional.

6. We are selling chairs of our manufacture, produced in Austria, to a firm in New York. Our chairs bear on the inside of the seats a trade-mark which is lawfully registered in this country. We notice that such chairs, which are delivered directly from our Austrian factory to said American concern, have been deprived of our trade-marks, and a label bearing the name of said American firm has been substituted. Can this be done?

A. Such a change of label or trade-mark as our correspondent describes is distinctly forbidden by law in some States. If it can be shown, in this case, that the substitution of the false trade-mark for the true one was made with a fraudulent intent, the guilty person may be prosecuted. If fraudulent intent cannot be shown the act may still be punishable.

7. If one orders from a dealer in beverages a dozen pint bottles of a certain beverage, at a certain price per dozen pints, the dealer delivers the beverage in the usual bottles used for the purpose, and it

is found by measuring the contents in a standard measure that the bottles contain only three gills, or three gills and a fraction, is the buyer obliged to pay for the full quantity ordered when he has received less than the standard measurement?

A. As a defence the seller must be prepared to establish one of these three propositions: either (1) that the buyer actually knew when the sale was made that a fraction of a pint was always accepted as a full pint; or (2) that the custom of making such deliveries was so notorious in that market that the buyer must be presumed to have known of it; or (3) that this custom was universal in that particular trade, and that the buyer, as a member of the trade, must be presumed to be cognizant of it. No buyer is bound to accept less than a pint as a full pint unless there is strong reason to suppose that what he had in mind when he bargained for a certain number of pints was, in fact, that number of fractions of a pint.

8. I am contemplating buying a small steam launch, say about twenty-two feet long, for my own individual use and perhaps a friend or two. Do I lay myself liable to punishment if I run it without engineer or pilot, I being thoroughly familiar with all its workings?

A. The chapter of the United States Revised Statutes on the regulation of steam vessels begins with the following definition: "Every vessel propelled in whole or in part by steam shall be deemed a steam vessel within the meaning of this title." Section 4,426 is devoted especially to "ferry-boats, canal-boats, yachts and other small craft of like character, propelled by steam," and it provides that no such vessel shall be navigated without a licensed engineer and a licensed pilot. Section 4,438 provides that it shall be unlawful to employ any person, or for any person to serve as a master, chief mate, engineer or pilot on any steamer, who is not licensed by the inspectors; and any one violating this section is liable to a penalty of $100 for each offense.

9. Can a man who is not a lawyer, bring suit against another without the services of a lawyer?

A. The laws provide that "a party to a civil action, who

is of full age, may prosecute or defend the same in person or by attorney, at his election, unless he has been judicially declared to be incompetent to manage his affairs."

10. Has the President of the United States power to pardon any convict in any State prison, regardless of the nature of his crime?

A. The right of the President to pardon criminals is limited in the constitution to "offenses against the United States."

11. A merchant here offers to give a watch to buyers of a bill of twenty dollars and upward. Is it legal so to do?

A. We know of no law that is violated in such an offer. There is neither gambling nor lottery dealing in such a gift.

12. What is the difference, if any, between an illegal and an illegitimate business?

A. An illegal business is illegitimate, but not everything spoken of as illegitimate is illegal. A business may be illegitimate because not in the line of proper, regular business.

13. Thirty-five years ago I built my present residence on lot fronting on public street. The road at that time was two rods wide, and it has remained the same width ever since. There is now a move to widen this road one rod, which would cut into part of my house and cause me injury—what redress have I?

A. The statutes of several States provide that no building or yard shall be taken for the purpose of a public or private road until after very careful investigation has been made as to the necessity of such act. If the damage to property by such an act is likely to be irreparable, a court of equity will grant an injunction, which will be made permanent or dissolved, as may seem best to the court, on the hearing of the case. If the damage is not to be irreparable, the proper proceeding is to sue the commissioners for trespass when they enter upon the land.

14. A owns a factory and a storehouse on a certain street, and between them stands a private dwelling, and the owner of the dwelling forbids A from having his goods moved back and forth from his

buildings on hand trucks over the sidewalk in front of the dwelling. Has A a right to the privilege over this sidewalk?

A. The use of any wheeled vehicle, as a wheelbarrow or hand truck, on the sidewalks is forbidden by law in many cities. This law is violated every time a truck or cart is backed up on the sidewalk to receive or discharge goods, but for the convenience of trade the officers of the law wink at the violation, where the nuisance occurs in front of the offender's own premises.

15. Is the widow (who has remained unmarried) of a corporal, who was wounded in late war and honorably discharged, receiving a pension to date of his death (eighteen years ago), entitled to his back pension, also a continuance of the pension through or during her life?

A. The widow is entitled to such pension as was due the husband at the time of his death. She is not entitled to a pension for the time which has elapsed since she became a widow, unless she can show that her husband's death was caused by the wound received or a disease contracted by him while in the service of the United States.

16. Would it be lawful to sell a metal polish for household purposes which contains from five to ten per cent of prussic acid salts, without cautioning the buyer as to its danger if taken internally?

A. The Penal Code declares that "a person who sells, gives away or disposes of any poison or poisonous substance (except upon the order or prescription of a regularly authorized practicing physician), without attaching to the vial, box or parcel containing such poisonous substance, a label with the name and residence of such person, and the word 'poison' and the name of such poison all written or printed thereon in plain and legible characters * * * is guilty of a misdemeanor."

17. A is the secretary of an association which is going to run a sociable affair at a nearby park. About a month before the affair A distributes about fifty tickets to his friends by mail with the understanding that they will forward the payment of same at a future date before the affair. Now B, a stranger, finds one of the tickets on the street, and not knowing whether the ticket is paid for or not comes to the affair on the date mentioned on the ticket and offers the ticket at

the gate and demands admission. The person who collects the tickets at the gate finds by his book that the ticket is not paid for and refuses to admit B. What right has B?

A. Such a ticket as our correspondent describes is not an assignable contract, or any contract at all; it simply affords some evidence that a contract has been entered into, a contract, namely, that the issuer of the ticket will supply some commodity or entertainment and that the holder of the ticket is entitled, by reason of having paid for it or in some other way, to share in that for which the ticket calls. This evidence is not conclusive; it may be rebutted, and if it is found that the holder of the ticket is not a party to the contract—that he has found the ticket, as in this case, for example—he cannot compel the other party to the alleged contract to carry it out.

18. I bought a three-story and basement brick dwelling. A few months ago while in conversation with my neighbor he remarked to me that if he wanted he could cut off my timbers, which, he said, were resting in his wall, and have my building drop to the ground; that I have no sidewalls on either side, as my dwelling is between three-story and basement dwellings like my own. Is there any law that would protect me in such a case? The building has been standing for perhaps forty or fifty years. Nothing is mentioned in any deeds.

A. The owner of a building is entitled to have it remain as it is, whether he holds by long continued adverse possession or by permission of his neighbors. If in the beginning he used the walls of the adjoining houses to sustain his rafters without permission of the owners of those houses and in defiance of their rights, they should have had his building removed at some time within the first twenty years, or such period as his State allows. The law gives them this amount of time in which to enforce their rights with its aid, but if they neglect for those years or more to ask the assistance of the courts, such assistance will not be granted to them thereafter.

19. Four persons broke into a place and were caught and confessed. They also told where they sold the goods. Are the thieves and the receiver accomplices, or can they be prosecuted separately?

A. A person, other than the thief, in whose possession stolen goods may be found, may be altogether innocent of any crime, or he may be what is known in criminal law as "a receiver of stolen goods." If the person in possession is found to be an offender he may, in some cases, be in position to give such evidence against those who actually took the goods as will suffice to convict them without requiring corroboration from other sources. The importance of deciding whether such persons are or are not accomplices of the thief lies chiefly in the fact that the evidence of an accomplice must be corroborated, while that of one who is not an accomplice may be accepted without corroboration.

20. A company which publishes a magazine has been sending it to me for some time every month. I have never subscribed to the magazine nor have I ever received a bill from them for papers already sent. Can they compel me to pay for the magazine?

A. If a magazine is sent to one who has not ordered it, and if his relations with the publisher are such that he has reason to suppose that the magazine is intended as a present to him, he may accept it and refuse to pay for it if payment is afterwards demanded. If there is no reason whatever to suppose that the magazine is sent as a present the person to whom it is sent cannot refuse to pay for it if he accepts and uses it. Notwithstanding the fact that he did not order it his acceptance and use of it raises an implied promise to pay for it if he has no ground for supposing it was meant as a gratuity.

21. A is a miller whose flour brings more in the market than others. B has flour ground at other mills and takes it to market and represents it as being ground at A's mill, thereby working injury to A's reputation as to flour and also as to price. Has A any cause of action?

A. Any manufacturer who has established a reputation for his goods may have all other persons restrained from trading upon this reputation and may recover any damage he has sustained as a result of their doing so. His right to these remedies stands upon the same footing as his right to

the exclusive use of a trade-mark by which his goods are known. To imitate a trade-mark is only one method of injuring a dealer by falsely representing goods to be of his manufacture.

22. Has a policeman the right to enter a private house by force if he has reason to think a crime is being committed there (if, for instance, screams of "Murder" are coming from the house)? Is the resident of a house justified in using violence to prevent a policeman from entering, he having no warrant, but reasons of his own for thinking a crime is being committed in the house?

A. The common law rule was that an officer without a warrant might not enter a private house except in pursuit of a criminal; but this strict rule has been considerably modified. It has been decided that an officer is justified in making an arrest without a warrant where he has reasonable ground for suspecting that a felony has been committed.

23. 1. Can a Produce Exchange membership be attached by sheriff on a judgment for debt?

2. Does suspension from the floor of the Produce Exchange for debt, or in case of assignment, forfeit either the membership or gratuity fund benefits of a member?

A. 1. A sheriff cannot take a produce exchange membership on an execution levy. After the execution is returned unsatisfied, an application may be made for the appointment of a receiver, who would probably be able to reach it.

2. A suspension from the floor of the exchange for inability to pay debts, or an assignment, is not equivalent to expulsion, and does not work forfeiture either of the membership or the benefit of the gratuity fund.

24. What provision is made for succession to the Presidential office in the case of a President-elect dying between the time of his election and inauguration?

A. If either or both of the presidential candidates should die after the electors are chosen in November, and before they meet the second Monday in January to vote for the president and vice-president, the electors, who are morally bound to vote for the nominees under whose banner they

were chosen, may act upon instructions from a called convention of their party, or of the party leaders, or may do whatever is right in their own eyes, and select the official to suit themselves.

25. Are riparian rights determined by State or by national law?

A. Riparian rights are determined by the statutes of the several States, or in the absence of such, by the common law.

26. About fifteen years ago persons owning lands adjoining the old Chenango Canal (now abandoned) permitted a sluiceway to be cut in the embankment for the drainage of water which previously ran down the old canal bottom. Now these persons have filled up this sluiceway, which, of course, sets the water back, as the canal below the sluice has since been filled. Can these persons fill this sluiceway (to the injury of others) after once permitting it to be opened?

A. The persons who allowed this sluiceway to be cut may fill it up again if they can do so without harm to any investment that has been made on the supposition that the sluiceway would remain open; otherwise they may not fill it up. They have allowed the sluiceway to be cut, apparently, under circumstances showing intention to allow it to remain so indefinitely. Now, if any owner of surrounding property has erected buildings, or made improvements, upon the supposition that this intention would be carried out, he has an equitable right to insist that it shall be carried out. Any other theory would allow the owner of one piece of land to entrap his neighbors into very great loss or the payment of heavy damages to him. Equity will not allow either.

27. A, either in person or by his employes, among whom there are frequent changes, was in the habit of taking feed, grain, etc., from B's teams passing his farm and paying B for it upon receipt of a bill. Upon presentation of the last bill, he refused to pay a large portion of it, saying he had let the place to C, who was to have all the income and pay all expenses. B had no notice of this arrangement and supposed the goods were for A as heretofore and would not have given credit to C, knowing him to be irresponsible.

A. If A is in charge of a farm, or of any establishment, and orders goods, in person or by deputy, from B, for use

upon the farm or in the establishment, then A is bound to inform B of any change whereby he ceases to have an interest in the place for which the goods are ordered. B is entitled to suppose that A remains in charge, and continues liable, until, from some source, he has actual notice to the contrary.

28. Where a union of properties is achieved by making an agreement in restraint of trade how can that unity be legally dispersed in an effective way?

A. If various properties have been combined in illegal restraint of trade it is often possible simply to separate the properties once more and return each to its proper owner. If the various owners can agree as to the basis of division the courts will not interfere.

29. Is there any material difference in the value of a press copy of a letter, and a carbon copy?

A. When it becomes necessary or desirable to prove the contents of any written document, in a suit at law, the courts require that the very best evidence available be produced. If a letter has been written or any other document, and then a letter-press copy has been made of it, the courts hold that the copy is not as good evidence as the letter itself or other original. If the original has been lost or destroyed, or for any reason cannot be produced, the copy may be admitted in evidence and the jury may give it such weight as they think it ought to have. But the copy cannot even be brought before the jury until the loss or absence of the original is duly accounted for. When a number of specimens of any document are made at the same time, or practically at the same time, and by the same process, they are all of equal value as evidence. If the original itself and one or more other specimens were made at the same time (as when carbon paper is used in a typewriting machine or under a pencil) all the copies are equally originals; they are called duplicate, triplicate, etc., originals. If any original was made first and then copies of it were afterward turned out

by any process—a carbon process or any other—these copies are not so good evidence as the original, but any one of them is as good evidence as any other.

30. B & Y received a sample of goods from a foreign company. B & Y wrote: "Please book us for so many hundred packages same as sample sent, shipments to be made according to directions." The quality of the first shipment was good. We sent them around to our trade and booked orders to arrive. When the next lot came we shipped them from the dock. We had ordered another lot of 400 and before we paid for any of the 400-lot we received complaints that the quality was not good, and the packer had put his advertisement inside each package after the first lot which we examined. We at once ordered them to stop putting any advertisement of theirs in our goods; they replied that they were sorry but continued to do so to the last lot. We have lost a trade that cost us many years to get by their so doing, and we have refused to pay for the last 400. Are we entitled to damages?

A. There is no legal ground known to us upon which our correspondents can recover damages in a case of this kind. The damage of which they complain seems to have arisen out of the fact that the sellers put their own advertisements inside the packages, so that the consumers were enabled to get their future supplies directly from the original source instead of dealing with a middleman. The only redress of the latter, we believe, is simply to transfer his own custom elsewhere. A manufacturer cannot be prevented from letting the world know of his existence and place of business through circulars enclosed in the packages he sends out, nor can he be compelled to pay damages to any one whose opportunities for dealing in the goods are thus lessened.

31. A establishes a business to sell certain articles such as books, pictures, etc., and gives with each article a chance (such as a slip with numbers) to secure a premium of considerable value. Is this legitimate?

A. The scheme here proposed is illegal. Anyone putting it into practice is guilty of a misdemeanor and liable to fine and imprisonment.

MISREPRESENTATION.

1. On Saturday, July 28, a wholesale produce commission house wired me: "Sold last Friday car tomatoes, mostly forty cents. Prospects better for Monday." Does not that partly, if not wholly, confirm to me that I will get forty cents or better for the next car of tomatoes shipped to him that day, Saturday, as per his wire? They were in good order and he knew that the price was thirty cents to me here when he ordered the goods. He made me a loss of $200 or over on the car, when I could have sold it here for thirty-five cents.

A. A commission merchant might send to a dealer such a dispatch as this without incurring any liability whatever. Whether he does make himself liable or not, in any given case, depends upon a variety of circumstances—upon the relation existing between the parties, the intent with which the act was done, the truth or falsity of the statement, etc. The message cannot, in any case, be construed as a representation that the recipient will be able to get any particular price for his tomatoes in the future; he is left to judge of that fact for himself. The commission merchant is liable if his statement was not true, if he made it intending to have the recipient act upon it, if the relations between them were such that the latter would probably do so, and if the recipient did ship tomatoes in reliance upon the misrepresentation, and so incurred a loss. If the statement was true the commission merchant incurs no liability at all, even though tomatoes afterwards declined and a loss resulted.

2. A has bought the goodwill of B's business as manufacturers of a class of textile fabrics. Is A entitled to mark the goods "A, successors to B"? It should be mentioned that B still proposes to continue in business in other lines than those turned over to A. Also that A only proposes so making goods of the class thus turned over.

A. Any merchant or manufacturer has a right to publish the exact facts with regard to the goods he handles or makes, provided he do not mislead the public in so doing. "Successor to B" usually means the person who has bought out B's whole business, including the goodwill. If A has bought merely one branch of B's business, and the goodwill

of that branch, he is at liberty to make that fact known as widely as he chooses. He may advertise himself as B's successor in that particular line. But he must be careful to show that he is a successor in that line only, and no further; for if B can bring forward two or three merchants of average care who will testify that the impression they got from A's statement was that he had succeeded to the whole of B's business, B can put an end to the further circulation of that statement, and may recover damages.

3. If a life insurance policy is issued, and it is afterward found out that statements made in obtaining it were not true, can it be cancelled?

A. The contract embodied in a life insurance policy is like any other contract in that it may be forfeited or avoided upon proof of the falsity of any warranty contained in it, or by reason of any misrepresentations of the insured which are collateral to the contract.

4. Is it lawful to bring cloth to this country from abroad, make it up here and then put tickets on the finished goods, which read: "Made in France"?

A. In some States such a method of marking goods as our correspondent describes can probably be prevented or punished under Penal Codes.

MONEY.

1. A party stole from our safe $150; he was afterward caught and confessed. Before being apprehended he paid debts amounting to $50 with our money. We wish to know whether stolen money is legally considered as stolen property and recoverable.

A. Stolen money or negotiable instruments differ from other chattels in this respect, that the owner cannot always take them from any holder in whose hands he may find them as he can take other chattels that have been stolen from him. A *bona fide* holder of money who has given a valuable consideration for it, or furnished any equivalent, and who has taken it in good faith with no notice of lack of title in the

person who paid it to him, may hold the money against the person from whom it has been stolen.

MORTGAGES.

CHATTEL.

1. A rents a flat of B, and getting into arrears with his rent gives B a chattel mortgage on some furniture. Before the mortgage is due A sublets the flat with the above furniture to C, and leaves the flat. When A's lease expires his tenant to whom he sublet the flat (C) takes the same flat from B and continues to use A's furniture, though B does not lease it to him. The mortgage by that time was due. A never claims the furniture and B never rents it, but holds it in his flat, and finally, when the tenant (C) moves, B stores the chattels in another flat and has some of them cleaned. Can B sell the chattels, and if they bring less than A's debt for rent, sue for the balance?

A. The execution of a mortgage simply secures a debt, but does not pay it. If default is made in payment and the mortgaged property is sold, the creditor still has a valid claim for so much of the debt as is not paid in this manner. In the case put by our correspondent, unless B has consented to take the mortgaged property in satisfaction of his debt, he still has a valid claim against A for the whole amount of the indebtedness, and this claim will be as good after the sale of the property as before, except as to the amount realized from the sale.

2. What is the utility and efficiency of a trust receipt given by the buyer of merchandise to the party who sells the goods as a means of security, the buyer buying same goods from different parties in the same way and mixing them together, or keeping them separate? Are the seller or sellers perfectly secured for the value of goods sold by holding a trust receipt, and how?

A. We do not see how a trust receipt can be dealt with so as to become a sufficient security, or a security of any practical value, to a seller of the raw material of manufacture. This much is certain: that whenever the ownership of property is transferred, as it clearly is in this case, and the seller merely reserves security of one kind or another for the price, the contract will not create a valid lien in the

seller's favor unless a chattel mortgage is taken and recorded as the law requires. The security may be called a trust receipt, or by any other name, but it is of no validity unless it is, in fact, a chattel mortgage, and unless all the requirements, as to recording, etc., are duly observed.

3. A claims a certain document to be a chattel mortgage, subject to foreclosure at option of party of second part. B claims it is neither a chattel mortgage or bill of sale, therefore worthless.

A. A chattel mortgage is a present transfer of the title to the property mortgaged, subject to be defeated on the payment of the sum it was given to secure. No particular form of words is required, but it has been held that any words which serve to transfer the property as a security for a debt or obligation of any kind are sufficient to constitute an informal mortgage, which will still be a mortgage at law. Whatever language may be used, if it shows that the parties intended a sale of chattels as security, the instrument will be construed to be a mortgage.

REAL.

4. A bond and mortgage has been held on certain property for years. Recently the property has changed hands three or four times, and in hunting up the last purchaser with a view of getting a renewal of the fire insurance policy he writes as follows: "We have thrown down the buildings and are erecting a six-story building, the excavations being very near completed." Had this man any right to remove the building without permission of the mortgagee, and how is he liable?

A. If a mortgagee learns that the mortgagor is about to remove buildings from the premises so as to impair the security the mortgagee is entitled to an injunction to prevent such removal, unless the mortgagor is prepared to give a sufficient bond to hold him harmless. After the removal has taken place the nature of the mortgagee's remedy differs in different jurisdictions. In many States the courts hold that the mortgagee is entitled to recover damages whether the remaining property is sufficient to secure his debt or not, and sometimes foreclosure is allowed immediately.

5. I hold a mortgage originally given to secure $2,500, of which sum $500 has been paid and indorsed on the bond. The owner of the property on which the mortgage existed before he purchased it by letter asked me to extend the time of payment of the principal for two years. I wrote in reply: "I hereby extend the time of payment of the bond and mortgage on —— street, now held by me, until November 1, provided, however, that all the stipulations, clauses, agreements and contracts in the said bond and mortgage respectively contained, except the time of payment of the principal sum, are to remain in full force and virtue until the whole amount of said principal and all interest thereon have been paid." Is my security weakened in any way by my reply to said mortgagor?

A. A mortgagee may extend the time of payment, as was done in this case, without losing any right he may previously have had against the mortgagor; as between them the relation is precisely what it would have been if the mortgage had been for the longer term in the first place. If there were any sureties upon the note or other obligation the mortgage was given to secure, the mortgagee would lose his right to look to them if he should enter into a binding arrangement to extend the time of payment without first having obtained the consent of such sureties.

6. Some time ago A assigned a mortgage to B, but the assignment was never recorded. The mortgage was recorded when it was given. The assignment and mortgage have been destroyed by fire, but not the bond. Now A refuses to sign a discharge of the mortgage or an assignment. What course can B pursue to straighten the matter up?

A. A mortgagee is not bound to discharge the mortgage, of course, until the mortgagor is ready to pay it. If the amount is due, according to the provisions of the mortgage itself, or of the bond, the mortgagor may tender the amount to the mortgagee and require him to sign a satisfaction piece at the same time. The mortgagee can be compelled to sign the satisfaction piece, and this may then be recorded as a discharge of the mortgage.

7. A person who owned a large amount of real estate gave a mortgage on one piece of it to secure some notes. Since that time he has sold a large part of his other land, and he is now trying to sell all that is left except a few pieces that are also mortgaged to nearly,

or quite, their full present value. The notes and the mortgage first spoken of are to run for several years. There is some reason to fear that the land may not be good for the amount loaned upon it when the due date arrives. Could not the lender prevent his debtor from selling his land?

A. If B owes money to A, and A holds a mortgage on part of B's real estate as security for payment, A's lien does not extend beyond the property specifically covered by the mortgage. The land may be sold under foreclosure, if the debt is not paid, and for any deficiency the mortgagee has the same claim against the mortgagor that any unsecured creditor would have. Having secured a judgment for the deficiency he has the same right as any other creditor to satisfy the judgment out of any property belonging to the mortgagor.

8. I have a couple of building lots and am offered their worth by a party who wants to erect a building on one of the lots and construct a railroad switch on the other. As he wants to give a mortgage for part of the purchase price I would like to know if the construction and operation of a switch would interfere in any way with foreclosure proceedings, should such occur?

A. Any improvements made upon mortgaged real estate by the mortgagor or owner will inure to the benefit of the mortgagee. As against the latter, the mortgagor is not entitled to an allowance for improvements made by him upon the mortgaged property except where there is a covenant in the mortgage that such allowance shall be made in case of foreclosure.

9. If there is a mortgage on a piece of farming land has the mortgagor a right to remove or to sell the hay or other crops, standing or cut, after foreclosure proceedings have been begun and while they are still pending?

A. It is the law that growing crops are covered by a mortgage upon the land, but crops which have matured and been severed from the land are not so covered. Accordingly, when a mortgage is foreclosed the mortgagee becomes entitled to growing crops and the mortgagor to such as have been gathered in the usual course of husbandry. The right

of either the mortgagor or mortgagee to growing crops depends upon his right to possession of the land, and the mere commencement of foreclosure proceedings does not put an end to the mortgagor's right.

10. A mortgage now falling due and both parties being willing to continue it, should any search be made or a new mortgage drawn up?

A. In such a case as our correspondent puts, everything may safely be allowed to remain just as it is. A real estate mortgage need not be renewed as a mortgage on chattels must be in certain cases. If the legal number of years for outlawing were allowed to elapse from the due date of a real estate mortgage, without any payment of interest or of any part of the principal, by the mortgagor, without any written acknowledgment on his part that the mortgage was still in force, and without foreclosure by the mortgagee, the latter might find that his right of action was barred by the statute of limitations. But so long as a mortgagor is paying interest on his mortgage, from time to time, it is vain for him to deny that the mortgage is still in force.

11. A borrows from B $200 to pay for stock in a corporation where both hold equal shares. B takes a mortgage for the $200 on A's share. The mortgage calls for the money to be paid on or before May 15 on demand. After two weeks B demands his money; A can't pay because the money is invested in unsold goods. B compels A to sell his share to him under threat of foreclosure. B buys the share at his own price, at the same time stating that he had no need to buy the share, as he could have forclosed without paying A anything if he had so desired. Is this legal?

A. The mortgagor could not have been compelled in this case to sell his stock to the mortgagee at a price arbitrarily fixed by the latter, but since the sale has been made he may find some difficulty in having it set aside. If the stock was sufficient security for the amount borrowed upon it the owner might have borrowed the money from some other lender, on the same security, with which to pay the existing debt. If he was willing to have his stock sold he might at least have insisted upon a sale at public auction, where there would have been an opportunity to realize the

true value of it. But if he deliberately sold it to the mortgagee the transaction may be valid even though the seller did not know what his legal rights were at the time.

12. I am notified by a lawyer that my failure to pay the interest on a mortgage given on a piece of real estate will entitle the holder to take legal steps at once to foreclose the mortgage because of my neglect. The lawyer who notifies me of the fact declines to hold off unless I pay the interest at once and in addition the charges for his fees. Can he compel me to pay the fee, even if he has not yet served me with notice of the commencement of the suit in the courts?

A. A mortgage on real estate cannot be foreclosed solely upon the ground that an installment of interest has not been paid promptly upon its due date unless the mortgage contains an express provision to this effect. But mortgages very commonly do provide that if default be made in payment of interest the whole principal shall, at the option of the mortgagee, become immediately due, and that payment of principal and interest may be enforced by foreclosure. If there is such a clause in this mortgage the mortgagee may foreclose immediately, but not otherwise. If the mortgagee will waive his right to foreclose upon payment of the fees by the mortgagor, but not otherwise, then the mortgagor must pay those fees or submit to foreclosure of his mortgage.

13. Mr. J. gives his attorney, J. S., a mortgage to foreclose, which he forecloses, having T. B. as referee. The property, sold at auction, is bid in by J. for $800, being less than the mortgage. S. turns over to J. the referee's deed and receives J.'s check for the $800, which S. claims must go through the hands of the county treasurer, but will be returned. J. S. dies before turning into the county treasurer the check for $800, although sixty days elapsed between the date of foreclosure and the date of S.'s death. S.'s estate proves heavily encumbered. What procedure should be adopted by J. to recover the $800 from S.'s estate?

A. If J holds a mortgage on real estate, and the property is sold under foreclosure, the money for which it is sold belongs to J, except so much as may be necessary to pay expenses and except also any surplus there may be over and above the mortgage debt of J. If there is no surplus all

the money belongs to J except what is needed to pay expenses. If J bids the property in himself and does not bid as much as the mortgage, there is no reason why he should pay the amount of his bid, only to have it returned to him afterwards. In this case if S never made payment to the county treasurer, B becomes creditor to the insolvent estate.

14. I purchased in January a piece of property on bond and mortgage, and have received a warranty deed with the boundary described in links and chains. I have made my payments promptly, as agreed, but have just learned that parties owning adjoining property have a deed which covers part of my property.

1. Am I obliged to make further payments until the party who has sold me the property has given me a clear title to the property in question?

2. Can the party who has the mortgage foreclose if I refuse to make payments until he has made good the boundary line?

A. 1. Our correspondent's paper title, at least, is clear as the matter now stands. He holds a warranty deed to the whole of the property, and that is all he is entitled to ask for. If owners of adjoining lands attempt to interfere with our correspondent's possession he may call upon the person from whom he purchased to defend his title. He is also at liberty to bring a suit to remove whatever cloud there may be upon his title arising out of the adverse claims. There is nothing in the facts stated by our correspondent which is sufficient to relieve him from the obligation to make future payments as they fall due.

2. The courts hold that "to a foreclosure suit on a purchase-money mortgage, it is no defense that there is an outstanding paramount title or incumbrance when there has been no actual eviction."

15. A gives us a mortgage on his real estate to secure us for money loaned. About the time of doing so he informed us that there was a prior mortgage but it was a family affair which did not amount to anything, leading us to suppose that it would not seriously affect ours. Subsequently upon examination we learned that no prior mortgage had been recorded. Two years after the execution of our mortgage we learned for the first time that A had been paying interest on

the prior mortgage. How does our mortgage stand should we foreclose?

A. The doctrine applicable to this case is that every holder of a mortgage holds it subject to such liens as he had notice of, either actual or constructive, at the time of taking the mortgage. Therefore the mortgage in the hands of our correspondent is subject to that previously given.

16. When part of a mortgage is paid off, say $1,000 on $5,000, leaving $4,000, what form of acknowledgment is necessary as evidence that the amount has been reduced?

A. When part of a mortgage is paid the payment should be noted on the back of the mortgage. If the mortgage was given to secure the payment of a note, or notes, an indorsement of the date and amount of the payment should be made on the note also. If the payment is sufficient to cancel one note that should be taken up. If there is a surplus over, or if the whole payment is not enough to take up any note, such surplus or the whole payment, as the case may be, should be shown on the back of the note or other obligation the mortgage was given to secure.

17. I have bought a home upon which I assume two mortgages, one of $5,000, about three years past due, and one of $1,500, with a year yet to run; interest paid up on both and both mortgages held by same party. What steps should I take to have the two mortgages consolidated into one of $6,500, with three years to run?

A. There is no way in which the terms of a mortgage obligation can be changed without the consent of the mortgagee. Having obtained this consent our correspondent may have the existing mortgages satisfied upon the record and execute a new one to replace them. If the mortgagee will not consent to this, and if he will not accept payment of the smaller mortgage until it is due, there is no other way than for our correspondent to wait until that time and then pay these mortgages with money borrowed from some one who is willing to take such a mortgage as that proposed.

18. I bought some property, the search being made by a title

guarantee and trust company. There is a small mortgage on the property. The interest for same has not been paid for over a year, the ex-owner claiming that he never received the full amount of the mortgage. I therefore deducted said interest and am now willing to pay same, but cannot manage to see the holder of the mortgage. Now, could the holder of the mortgage sell the property without notifying the owner and in what time?

A. There is no process by which a mortgage on lands can be foreclosed without prior notice to that person shown by the records to be owner of the land. If the deed is on record he must have notice before sale can be made and valid title given under it. The holder of the mortgage is not bound to go back of the record in searching for an owner, but he is bound to notify that person whom the records show to be the owner, of his intention to sell the land if the interest is not paid. Our correspondent seems to have made all the tender of payment he could be required to make in any case. A creditor cannot complain of default of payment if neither he nor anyone authorized to represent him can be found to accept payment. If the place of payment is distinctly named in the mortgage or in the notes, and the debtor was at that place ready to pay at the proper time, but the creditor was not there to receive payment, then there can be no foreclosure on this ground, with or without notice. Payment must still be made whenever it is called for.

MUNICIPALITIES.

1. A large water main under the street bursts. The water works are owned by the city and flood the surrounding property. It has destroyed clothes and household goods stored in the cellar. Is the city liable for the damage done?

A. The water works in some towns and cities are sometimes built and managed by commissioners appointed by the judges of the common pleas, and when this is the case the municipality is not liable for damages caused by the bursting of water mains. But in such a case, where the water system is owned and managed by the city, the city is liable for damage of any kind, whether to personal property

or buildings, if the damage is caused by any negligence in the manner of installing the system or in the management of it after it is installed. For inevitable accident there is no redress, but the city must make good the losses caused by the negligence of its servants or employes.

2. I am living on the ground floor of a private house containing two families, the owner residing in a different house. Suppose a passerby were to fall and be injured, the snow not having been cleaned from the sidewalk, who would be held liable?

A. The owner of a building may be liable to one who has been injured by a fall on the frozen snow in front of the building. He will be liable if he has done anything to increase the danger. If he has built his sidewalk at too great a slant, for example, or if he has allowed snow to slide from the roof upon the pavement, when this should have been prevented, and if the accident is traceable to either of these facts or to any other act of the landlord. A tenant will be liable if any act of his has produced the dangerous state of things. He may have shoveled the snow from the yard upon the sidewalk, and this may have caused the fall; or he may have brought about the dangerous situation in some other way, and, if so, he is liable. But if there is nothing else in the case except that the snow has fallen directly upon a properly constructed sidewalk, and has been allowed to lie there until it has frozen and caused damage to a passerby, then neither the owner nor the tenant is liable; the sole liability in that case is upon the city.

NAMES.

(See also Corporations and Firm Names.)

1. I contemplate starting in business for myself in New York city under a firm name. What legal forms are necessary to be gone through before I can establish myself in this way?

A. If two or more persons establish and carry on a business under a firm name, and, after some years, one of them dies, there are cases in which an individual successor to the firm may continue the business under the same name.

But there is no case in which a single person is authorized to begin business under a firm name, not previously in use, signifying that more than one person is interested in the business. Such use of a firm name not previously in existence is expressly forbidden in some States, where it is declared that a person who transacts business, using the name, as partner, of one not interested with him as partner, or using the designation "& Company" or "& Co.," when no actual partner or partners are represented thereby, is guilty of a misdemeanor.

2. A young foreigner before his majority eliminated a few letters of his name to make it pronounceable. He afterwards was naturalized, married, acquired and transferred property, etc., under his new name. Is this legal?

A. There is no legal objection to a change of name by any man at any time without the sanction of a court or other public authority, provided, always, that there is no fraudulent or illegal purpose in making the change. The chief advantage of applying to a court is that this assures a public record of the exact date at which the change was made, and raises a very strong presumption that no improper motive was involved. If a name were changed without this sanction, and it should become important some years later to establish the precise date at which the change was made, it might be that all the earlier documents signed by the new name were missing and that there would be great difficulty in fixing the date definitely.

3. We contemplated opening up in a neighboring town a retail grocery store, and intended to trade under the style and firm name of the "Philadelphia Grocery Company." This fact was announced in the local papers. Shortly after our announcement was made a rival concern put up a sign on their store and advertised that they would open a similar store in the course of two or three weeks under the name of the "Philadelphia Grocery." Can we restrain them from the use of that name?

A. If our correspondents had actually entered upon the transaction of business under the name chosen by them they might have been in a position to prevent any other firm or

person from carrying on business either under the same title or under any title so similar to it as readily to be mistaken for it. But a mere announced intention to begin business at some future time under a particular name has never, so far as we can learn, been held sufficient to protect the title.

4. Please set forth the steps to be taken by an individual to have his name changed by a court.

A. A resident who wishes to make a legal change in his name should prepare a petition asking leave to assume another name and present it to the County Court of the county in which he resides, or the legislature in some States. The petition must be in writing, signed by the petitioner and verified in like manner as a pleading in a court of record, and must specify the grounds of the application, the name, age and residence of the individual whose name is to be changed, and the name he proposes to assume. If the tribunal is satisfied with the petition, and knows of no reasonable objection to the change of name proposed, an order must be issued authorizing the petitioner to assume the name proposed on a day specified therein.

5. Two men conduct a business under the name of B. Sq. Co. The firm is not incorporated. One of the two men styles himself president, the other secretary. Are they individually liable for the debts of the company?

A. The fact that a firm transacts business under a name appropriate to a corporation will not release the members of the firm from their individual liability for the debts of the concern. Not only are the individual members liable as partners for the debts of the firm, but they are criminally liable, in some States, if they do not place on record with the county clerk the facts required by law to be made matter of public record in such a case.

6. 1. If a child is named "Willie," and in his twenty-first year he accepts that as his name, must all legal documents for him be made out in the name of "Willie," or would they be legal if made out in the name of "William"?

2. His name being "Willie," would legal documents signed by

him " William " be legal, or has he any right to sign his name " William " to any paper.

A. 1. The courts take judicial notice of the ordinary and commonly used abbreviations and equivalents of Christian names, and it would take no argument to prove to them that " Willie " was a common variation of William.

2. A man can bind himself to a legal obligation by any name, whether Christian or surname, he chooses to use on that occasion. A name is a convenient means of identification, and one party to a contract might refuse to accept it if the signature of the other party were materially different from that commonly used by him. But if one named A. B. signs his name as X. Y. to a document, intending to be bound by the signature, he is bound by it. All that is necessary is to show that the person who made the signature is he who is named A. B. This may be more difficult to prove when the name signed is other than A. B., but the fact being established in any way, the real signer is bound. A man may sign any name he will if he have no fraudulent intent, and if the other party to the contract does not object.

NATURALIZATION.

1. Should a boy come to this country at the age of two years from Germany and return there after he has attained the age of 22, could the German authorities compel him to do military duty?

A. If the boy was naturalized here, or if his parents became citizens while he was a minor, our treaty with Germany will protect him after his return for two years. After that, if he lived in Germany he would be subject to the law applicable to German citizens. If neither he nor either parent was naturalized, the law would apply to him the moment he landed in Germany.

2. In the case of a naturalized citizen of this country having sons born in this country, and while the sons are in infancy the parents return to a foreign country and become citizens of that country; now after the sons are twenty-one years of age they return to this country; are they legally entitled to a vote as American citizens?

A. A child born within the jurisdiction of the United States is a natural born citizen at the moment of his birth, and may claim that birthright no matter how long he or his parents live abroad.

3. A lad of thirteen years came to this country with his mother, who was a widow, with other children. Shortly after arriving he in company with another boy of his own age, visited the banks of the Harlem River; the other boy stole from the clothes of some boys who were in swimming a few dollars and both spent the money together; later both were arrested, and on pleading guilty were sentenced to State prison for five years, he being released when he was about nineteen years of age. My informant has been employed by a large corporation in this city for the past twenty-four years and is at present a trusted and esteemed servant of the same. Is he debarred from ever being naturalized, and if not, how should he proceed to obtain his papers?

A. When an alien applies for naturalization he is required to show generally that he is a person of good moral character, and, specifically, that for the past five years he has been known to at least two citizens of the United States as "a person of good moral character." The alien our correspondent has in mind might succeed in having himself naturalized without any mention being made or any question raised concerning his youthful conviction and sentence, but if that matter should come to the attention of the court naturalization would probably be refused.

4. Am I an American citizen, having been in this country three years? I came here at the age of 18 years.

A. No alien can become a citizen of the United States, no matter how young he came, until he has lived here five years. The only difference between one who came before he was 18 and one who landed afterward, is that the latter must wait two years after he has declared his intention before he can take out his final papers, while the former, at the end of his five years' residence, may make his declaration and take his final papers on the same day.

5. Can an unmarried lady who was born in Germany and has

resided here for six or seven years become a citizen of the United States in her own right?

A. An alien woman is entitled to naturalization under our laws upon proof of the same qualifications as to race, residence, good character, etc., as are required in the case of a man.

6. A father asks his married son to enter into his employ in Prussia permanently. The son is a naturalized citizen of the United States and possesses the Prussian papers releasing him from all duties as a Prussian subject. If, after being in his father's employ in Prussia for almost two years and then going to the United States or any other foreign country for about one month, can he stay for another two years?

A. A visit of a month in another country would not break up his residence in Prussia, so as to render that clause of the treaty inoperative in his case. To effect his object he would have to break up his residence in Prussia altogether and establish a residence elsewhere. Then he might return for another period.

7. A is born in New York city, of German parents, who came to this country as mere children. Is he a citizen?

A. Every white or negro child born within the allegiance of the United States is an American citizen at the moment of his or her birth.

8. Can a native of Greece, regularly and legally naturalized in the United States, return to and reside in Greece, keeping up his business connections in the United States, and not be subject to the local laws of Greece?

A. When a native of any foreign country naturalized here returns to his native land with the intention of making it his permanent residence, he is held to have renounced the allegiance to this country pledged at the time of his naturalization. With many European countries we have a treaty that a two years' sojourn in the native land shall be held conclusive of such renunciation. This country undertakes to protect its naturalized citizens as long as they are true to its allegiance; but if they renounce it by returning to their

former home to reside there permanently, it does not, and by the law of nations cannot in justice, claim them as citizens.

9. An alien was naturalized in this country several years ago. Two of his sons have since arrived at the age of 21. Are they citizens, without naturalization of their own, and are they entitled to vote?

A. When an alien is naturalized in this country all of his minor children then living here become citizens by the same act. When such a child reaches his majority he may register and vote on proof of the fact that his father was naturalized and that he himself was under 21 years of age at the time and a resident of the United States.

NEGLIGENCE

(See also Damages.)

1. An oculist ordered a pair of glasses for me. I could not wear them because he made a mistake. Can I be forced to pay the doctor?

A. If an oculist performs any service for a patient, using due care therein, the patient may be compelled to pay for the services whether they benefit him or not. This is the general rule. It holds in some cases in which the oculist has made a mistake, and in other such cases it does not hold. If the oculist has used a reasonable degree of care and skill, such a degree as oculists usually possess and employ, then he may claim his fee though he may have been mistaken in his diagnosis. If he has been guilty of any negligence, if the mistake is one which a fairly able oculist, using a reasonable degree of skill and care, would not have made, in the present state of the profession, then the oculist cannot exact any fee and he is liable for any damage caused by his negligence.

2. Our salesman wires: "Smith—5⅜c—300 bags Bl" (part of a line of 3,000 bags coffee). We answered: "Inform buyer entire 3,000 bags sold at higher price." The telegraph company delivers the message reading: "Confirm Smith," etc., instead of "inform." The buyer claims the coffee or a duplicate amount. Who is liable for loss?

A. When a seller of goods, or his agent, makes a mis-

take of the kind here described, and the buyer closes the contract in good faith and with no knowledge of the fact that a mistake has been made, the contract is binding and the seller can be compelled to furnish the goods or pay damages. Whether the telegraph company can be compelled to reimburse the seller or not, in a case of this kind, depends largely upon the nature of the contract under which the dispatch was sent. Telegraph companies usually stipulate upon their blanks that they are not to be held liable for any material amount unless the dispatch is repeated at half rates. The courts have long held that this is a reasonable rule, and that any sender of a message is bound by it if the notice has been brought to his attention actually or impliedly. If his message was written on one of the company's blanks containing the notice the sender is held bound by the notice whether he read it or not.

3. A serious personal injury has been suffered recently in the streets through the negligence of a truck driver. The truck bore the name of a firm of merchants and was engaged in their business at the time. The firm says that that particular truck and several others were employed by them for a short time until some repairs and changes could be made in their own trucking department; that they went to a large trucking firm and engaged it to furnish them the requisite number of trucks and drivers for a few weeks at a specified sum per week. If the firm can prove that this statement is true is it then released from liability?

A. In this case the employer may be held liable for the damages; but it is the real employer who is to be so held, and not another. When work is being done by an independent contractor, and the details and the exact method of the work are arranged and supervised by the contractor himself, it is he, and not the person for whom the work is done, who is responsible for the acts of the employes. The fact that the truck bore the name and address of a particular firm is evidence of some importance, but it is not conclusive. This firm may still show, if it can, that the driver was not in its immediate employ. Having held him out in this manner as one of its employes the firm would not be allowed to deny

that he was such to the detriment of anyone who had so acted in reliance upon the representation that it would be a hardship upon him to show the true state of the case; but this is clearly not an instance of that kind.

4. Recently one of our salesmen was sitting in a runabout which was drawn up to the curb with the horse facing in the right direction, when a trolley car attempted to pass when there was not sufficient room for it to do so. No warning was given, and the result of the collision was that one of the wheels was smashed. Who bears the loss?

A. The courts hold that the motorman or other person in charge of a street car is bound to take notice of vehicles near the track, and, if he sees that one of them is in danger of being struck, to stop his car if possible in order to prevent damage.

NOTES.

(See also Banks and Drafts.)

1. A gives his promissory note to B. B transfers this note with his indorsement to C. C deposits said note in bank for collection. The note was not paid at maturity and went to protest. The bank claims to have notified C thereof, but said notice was not received, and C was consequently under the impression that the note had been paid and placed to his credit, finding out the contrary only after a lapse of about three weeks. A has meanwhile failed in business. Who is now the loser of the amount?

A. It is not necessary in order to hold the indorser that the notice of protest shall be received by him. If the notary mailed it to C's address that is sufficient. C must then pay the amount, and can recover it of B, if the latter has had a like notice mailed to him.

2. A gives his note, indorsed by B, to C; the note is protested at the bank where it was placed for collection, and B, the indorser, is notified to pay it, but cannot do so. In order to collect it must C, the holder, sue A first and then B, or can he sue B only, and within what time must he bring suit in order to hold B, the indorser?

A. The holder of the note can sue either or both of the parties at his option at any time within the State statute of limitations.

3. Is the annexed form of note legal provided value received could be proven, and would the note ever become due if the President should not be elected?

$100.00.

One day after the date of the election of Wm. J. Bryan for value received, I promise to pay to the order of Richard Roe, one hundred dollars.

A. One of the requisites to the validity of a promissory note is that "the fact of payment must be certain." A note payable when "the annual fair should occur" has been held valid because the fair was always held, although at varying dates; but a promise to be performed when a certain suit is determined, or when a person shall marry, has been held not to be a valid note, because of the contingency. The note above described is not a valid promissory note.

4. A note for $10,000 due one year after date, made by A, indorsed by B, is the property of a bank. The note reads, "With interest after date at the rate of 6 per cent. per annum, payable semi-annually." Is it necessary to protest it, if at the expiration of six months from its date there is default in payment of interest?

A. A part of the decision in National Bank v. Kirby was to the effect that "the holder of a note, with interest payable annually, loses no rights against the parties to it, whether makers or indorsers, by neglecting to demand it, and he has the election to do so, or wait and collect it all with the principal."

5. A note reads: "On the 1st of May I promise to pay John Smith or order, $500 with interest from maturity." In case of non-payment when does the interest begin to run?

A. Interest only runs from the date when the note is due and collectible.

6. How would it affect my rating in bank if on Saturday I overdrew my account, intending to deposit on Monday but could not reach bank until Thursday?

A. An unpaid note, which lay over for the cause named, would not injure the maker's standing, but everyone ought to be careful about overdrawing his account in the manner described.

7. Is there any form of demand note that can be made that will absolutely hold indorser or sureties as long as the maker?

A. The note may be in the ordinary form, indorsed as follows: "I guarantee the payment of this note, if demanded of the maker, within ——— years from date." We think this would accomplish the object desired.

8. How long will an ordinary indorsement on a demand note hold the indorser?

A. To hold an indorser on a demand note payment must be demanded of the maker within a reasonable time — in Massachusetts a reasonable time was held to be three months after date — and if payment is refused the indorser must be notified. A reasonable time is one dependent upon the facts of the case, and the law is based thereon.

9. 1. For value received A gives his note to order of B. B sells this note to C and indorses accordingly. C presents this paper the day it falls due, but A refuses payment. Has he a legal right to protest this note himself, he being a notary?

2. Is a note made on Sunday collectible?

A. 1. C can protest the note himself for all the purposes important to any of the parties.

2. A note dated on Sunday but made on some other day is not affected by the date. A note made on Sunday in fulfillment of a contract not unlawful on that day is collectible. A note made on Sunday and delivered on a secular day, or afterward recognized on such day by the maker as his lawful obligation, can be collected by law.

10. An out-of-town correspondent drew on me in favor of a firm in this city for a moderate sum at ten days' sight. On presentation I offered to discount draft, which was declined. I then accepted it, making it payable at my place of business. Three days before maturity I received from the bank holding the draft one of their usual printed notices, saying the draft was due blank date. I took no notice of that notification, expecting that the draft would be presented at my office according to terms of my acceptance. I heard no more of the matter until quarter past 6 P. M. of the day the draft matured, when it was presented at my office protested. What was my duty in the premises?

A. The bank had no right to protest the acceptance until payment had been demanded at the place where it was made payable, and if any injury resulted to the drawee from the protest made without such presentation, the bank is liable.

11. A note is drawn payable at two points, say New York or San Francisco. Can the drawer dictate at which point he will pay?

A. Unless there is something in the promise which gives the option to the maker a note payable at " A or B " may be presented for payment at either place.

12. A dies and leaves two notes to the estate. B, C, D and E are the heirs. The notes are held against two of the heirs, C and D, and they wish to pay B and E in shares of stock at its supposed value for which the notes were originally issued. B for her share accepts the payment in stock, but E for his share will not accept payment any other way but in cash; C and D absolutely refuse to make such payment; what can E do?

A. If any person or estate holds a promissory note signed by C or D, or either of them, promising to pay at a certain time a specified sum of money, the signer or signers may be compelled to pay the note in accordance with its tenor. In case of failure or refusal to pay, the holder of the note has no recourse except to the courts. If he sues before the statute of limitations has run he will be entitled to a judgment as a matter of course, and the judgment will carry costs in favor of the successful plaintiff.

13. I was a depositor in a bank when it failed and at the time of its failure I had a balance there of $2,500. Some time before I had discounted my personal note, which is not yet due, for $4,000. I would like to ask you if, when my note becomes due, I can deduct the $2,500 balance which I have there from the face value of it? I am informed, however, that my note was given to some outside party by the Federal Bank. Does that circumstance affect the situation, and will I, under these conditions, still be able to deduct my $2,500 balance?

A. If a bank fails while holding on deposit $2,500 belonging to A it cannot compel A to pay the whole of a note of $4,000 held by the bank. Neither the bank, nor any assignee, receiver or trustee in bankruptcy, can refuse to ac-

cept the $2,500 already in the bank's custody at its full value. This leaves only $1,500 to be paid in cash, and that is all the bank, or any receiver or other person representing the bank, can compel the depositor to pay. But anyone who takes negotiable paper in the usual course of business, for value, before maturity, is allowed to enforce it against the maker or indorser without regard to any facts, unknown to him at the time of the transfer, which would have prevented the first holder of the paper from enforcing it. This is one of the advantages of negotiable paper, that it passes from hand to hand almost like currency; and that one who takes it is not bound to inquire into the relations between the original parties. If the note had not been negotiable in form, or if it was due at the time of its transfer, then the maker could not be compelled to pay it in full, but might set off against it the amount of his deposit in the insolvent bank. For decisions covering these points see 30 Fed. Rep., 754; 48 Hun., 263, and 16 Wend., 659.

14. What is the construction of the following sentence which appears on a note: "The makers and indorsers of this note hereby severally waive presentment for payment, notice of non-payment and protest"?

A. Where the maker waives presentment for payment he says, in effect, that the holder need not call upon him for payment anywhere, but that he will find the holder and pay him; then if payment is not made on the due date the maker is liable for interest until it is made, and suit may be brought at any time and the costs placed upon him. In a case like this he is in default as soon as the due date has passed, if he has not looked up the holder and paid him. The effect of a waiver is most marked, however, in the case of the indorsers. If notice of non-payment and protest are waived, as they are in this case, the indorser may be compelled to pay the note, if the maker does not pay it, even if the holder has neglected to give the indorser such notice as would be required in an ordinary case. In fact, the indorser may be called upon for payment even though the maker has not been

asked to pay at all; by waiving presentment for payment the indorser stipulates that the maker will pay without waiting for the note to be presented to him and payment demanded, and he also agrees that if the maker does not pay without being called upon to do so, the indorser himself will pay the note.

15. A note is made in this form:

On demand after date I promise to pay to the order of the —— Bank, twenty-two hundred dollars at the —— Bank, value received with interest.

On the back appears this indorsement:

For value rec'd we jointly and severally guarantee the payment of the within note. (Five signers.)

In case of the default of the maker who is first liable on this note?

A. We note, in the first place, that this is a guaranty of payment, and not simply of collection. The difference is a very important one; a person who guarantees the "collection of the within note" undertakes that the debt will be paid if the principal is prosecuted with reasonable diligence; such a guarantor does not become liable until or unless all legal means have been exhausted for securing payment from the maker. But one who is a guarantor of the "payment" of a note is immediately bound as soon as the due date is passed and the note is unpaid. He may be sued immediately, and no effort need be made to collect of the maker of the note. In the case here under consideration five different persons have bound themselves "jointly and severally" for the payment of the note. If it is not paid on its due date the holder may immediately sue all of the indorsers in one action; or he may sue any one of them, ignoring the others; or he may choose any combination of two or more and proceed against them jointly. There is no particular order in which he must pursue them; they are not successively bound, as successive indorsers for value would be; they are equally bound, jointly and severally, and he whose name is last upon the list has precisely the same obligation as he whose name is first.

16. A lends some money with the agreement to have it paid back at a moment's notice and takes from the borrower a note made payable "on demand." What is the law in regard to such a note?

A. The law with regard to a note payable on demand is that it is due and enforceable at any time after its issue. As against the maker of such a note even a demand of payment is not necessary; the beginning of a suit against him is a sufficient demand. As against an indorser, however, a prior demand upon the maker, and his refusal or failure to pay, must be shown in order to support a valid claim that the indorser, as one only secondarily liable, shall pay the note.

17. How long is a witnessed demand note without any payments valid?

A. In Merritt v. Todd it was decided that, as between holder and indorser, a demand note bearing interest was not due until demand had been made. But as against the maker of the note the rule is different. In Wheeler v. Warner the decision was that a promissory note, payable on demand, whether with or without interest, is due forthwith, and an action thereon against the maker is barred by the statute of limitations, if not brought within the legal period of date. The Code of Civil Procedure, section 410, provides that "where a right exists, but a demand is necessary to entitle a person to maintain an action, the time within which the action must be commenced must be computed from the time when the right to make the demand is complete."

18. I enclose herewith a note. The point is: Are not the makers thereof severally and jointly bound?

A. The note reads "we promise to pay," and is signed by two persons. The result is that it is a joint obligation only, and not joint and several.

19. A customer of ours sent us a draft to our order upon a New York firm, which latter were also the acceptors. The draft was payable at the New York firm's office, but through carelessness we failed to send it. Of course it could not then be protested. Do we, therefore, release the acceptors?

A. The person who is primarily liable upon a bill or

note is not entitled to prompt presentation and demand, or to protest and notice. His agreement is that he will pay at any time after maturity (unless the statute of limitations has run), when demand may be made of him. It is only those who are secondarily liable, those who undertake to pay in case some other person does not pay, who have a right to demand that this other person shall be promptly called upon for payment upon the due date, that protest shall be made if he refuses to pay, and that they shall be promptly notified of the facts. The person primarily liable upon an accepted bill of exchange is the acceptor.

20. A note reads: "For value received I promise to pay to the order of —— three thousand dollars, with interest at the rate of five per cent." (Signed) ——. Is the payment of a note thus drawn enforceable?

A. Such a note as this is valid and negotiable. It is due at once. Anyone who makes a note, and does not name therein any specific date of payment, is held to be ready and willing to pay it upon demand.

21. J. J. draws a ninety-day draft to order of P. B.; P. B. indorses the same and the draft is marked to S. & Co., New York. S. &. Co. accept it payable at their bank. Now it so happens that all these parties fail. Who is the "principal" debtor?

A. The effect of the acceptance of a bill of exchange is to constitute the acceptor the principal debtor. The bill becomes by acceptance very much the same thing as a promissory note; the acceptor is the promisor and the drawer stands in the same position as an indorser of a promissory note.

22. "Four months after date we promise to pay to the order of —— ——— fifteen hundred dollars at our office in Piqua, O., at 6 per cent. interest after maturity. Value received." Can the note be protested at maturity for non-payment?

A. The instrument herein named is an ordinary promissory note. The note bears no interest during the time it has to run; but if it is presented at maturity, and is not paid, then it will bear interest at the rate of 6 per cent. per annum, until the date of its actual payment. Protest is never needed

to bind the person primarily and absolutely liable upon the instrument. An indorser promises to pay only in case the maker does not pay and it is to bind the indorser that protest is made. The effect of protest, in short, is simply to give to the person secondarily liable upon the paper due and formal notice of the fact that demand was made upon the person primarily liable at the proper time and place, and that this person failed or refused to make payment. What is to be done in this case is simply to demand payment of the maker when due. If he fails or refuses to make payment, it will be well to have the note formally protested if there are any indorsers upon it.

23. I lend $100, getting in exchange a thirty-day note for $125, the body of the note reading "secured by range." The borrower owns a restaurant and the range is part of the fixtures. Are the words "secured by range" any guarantee, and if so have I any claim on the range?

A. Such a phrase as "secured by range" is altogether too indefinite to support a lien on any particular range as against a purchaser for value. The only way for our correspondent to have secured a valid first lien on the range would have been to take a chattel mortgage upon it in due form, and then to place the mortgage on record.

24. Would a demand made by a notary for payment over a telephone be legal?

A. In the absence of decisions definitely determining the matter, we are of opinion that a demand of payment made over a telephone is sufficient or not sufficient in accordance with the answer of the person upon whom the demand is made. If he replies that he will not give a definite answer until he shall have had an opportunity to examine the paper, we are of opinion that this cannot be taken as a refusal to pay; that the paper must be taken to him, in that case, and submitted to his inspection.

25. Is the payment of promissory notes "by telegraph" in use in the United States of America?

A. Money can be transmitted by telegraph in this country

for any purpose. The money is deposited at the telegraph office by the sender, together with the name and address of the person to whom it is to be paid. That person is immediately notified, and upon establishing his identity collects the amount from the office receiving the message.

26. Hall & Co. sold Weil & Co. a bill of $600, on following terms: Note for $200, less 5 per cent at 30 days; note for $200, less 3 per cent at 60 days, and note for $200, net at 90 days, and in the body of each note is stated "failing payment of this note in full at maturity all notes otherwise subsequently due to become now immediately due and payable." Weil & Co. failed to pay first note. Can the whole account be sued for as due?

A. The courts have often held that "a contemporaneous written agreement may be considered and construed in connection with a note, and may control the effect of the same as between the parties." The contract here set forth in the notes making the later ones payable immediately in case of default upon one of earlier date, may be enforced between the original parties to the notes.

27. Can a promissory note made payable to me with the words "to the order of" stricken out, be transferred to, and made collectable by any third party, and if so, how?

A. The striking out of the words in question leaves the note "non negotiable," but it may be transferred or assigned to a third party who may bring suit in the name of the payee, or in his own name as owner, in equity of the obligation.

28. What is the effect of the following way of indorsing?

"Francis M. Smith,
Charles Morris Smith,
Trustees Estate of Amos D. Smith."

A. The main stress of the verdict rests in every case upon the importance of setting forth clearly and distinctly in the signing and indorsing of negotiable paper the fact that the undertaking is in behalf of a described principal, and not of the individual whose name is used. The courts hold that this is merely a descriptive title, not an executed promise in behalf of the estate. In this case the suit was

brought against the trustees individually because it is easier to collect money from a living person than from a dead man's estate. The indorsements should have read: "For the estate of Amos D. Smith, Francis M. Smith, Charles Morris Smith, Trustees," and then only the estate could be held.

29. I am the holder of a note executed by a man who died some time ago, and which note is indorsed by a responsible party. While the estate of the maker of the note is perfectly good, I do not wish to release the indorser. The note is not made payable at any particular bank or place of business, and I should therefore like to learn your valuable opinion as to the steps to be taken in the matter regarding protest, etc.

A. When the maker of a note is dead at the time of its maturity, and no place of payment is named upon the paper, presentment should be made to his executor or administrator, if one has been appointed, and if he can be found with reasonable diligence. If there is no personal representative presentment should be made at the late home of the deceased. The indorser will be bound by protest and notice following such presentment.

30. A and B, private bankers, contemplate organizing a national bank, solicit subscriptions and take notes for amounts subscribed, agreeing to issue stock in the national bank for same when organized. A and B rediscount some of these notes in the course of their regular business. Now, suppose the bankers should fail in their effort to organize a national bank, could the makers of the notes plead "failure of consideration" against purchaser for value, even though the purchaser had collateral information of the whole transaction?

A. A negotiable note, such as those described by our correspondent, is valid in the hands of a purchaser for value, and his knowledge of the equities existing between the original parties does not affect his title. It has often been held that even an accommodation note was good in the hands of a *bona fide* holder for value, though he had full knowledge of the original transaction. In a suit upon such a note the defendant, unless he is the immediate indorser of the indorsee, must show not only a failure of the original con-

sideration, but a like failure between the plaintiff and his immediate indorser.

31. If a bank accepts as collateral on a loan, indorsed commercial paper maturing before the loan, there being no agreement as to the collection of the collateral notes, what are the bank's rights, and what is its duty as to presentation of the collateral and its protest, if not paid?

A. The bank should treat the collaterals precisely as if they had been left with it for collection.

32. If A gives B his note at ninety days, with the words "Interest 8 per cent" written on it what construction would the courts put upon the wording?

A. If the words quoted are so written as to form any part of the obligation, the note will bear interest from its date.

33. A makes a note to B, which B returns to him to be discounted by A so as to obtain money. In order to make the note stronger A gets C to indorse it. A comes to me to purchase the same. It being a note for four months and one week having elapsed since the note was made, A wishes to change the date of its issue. Is this legal and does it in any way affect the indorsements of B and C?

A. Our correspondent cannot loan any money upon the strength of this note and then expect to hold the indorsers, whose contract has been materially altered, without their consent, since they became parties to it. There is some protection to an innocent holder who takes the paper without knowledge of the alteration; but a holder who knew that the contract of the indorsers had been materially altered could not claim protection under the statutes.

34. Has a bank the right to hold a customer's balance towards the payment of a note which they have discounted, before the note is due, when they have reason to believe the party will not be able to meet it when due?

A. If the customer is actually insolvent and has made no legal assignment of his balance, the bank can hold the balance against an unmatured note. But a suspicion, or even "good reason to believe" that the customer will be un-

able to pay the note is not sufficient to give the bank a lien on his balance for a debt not due.

35. A bank holds for collection a note of Jones indorsed by Brown. The teller mistaking Jones for James sends to the latter a notice that he has a note maturing on a given day, which is a polite request for him to call and pay it. James has gone on a journey and has left in the hands of a friend a cash account to meet all obligations duly presented. The friend, supposing the notice correct and the payment due, calls at the bank and takes up the note. When James returns he finds that it is not his note but that of Jones, and demands the return of his money. Jones in the meantime has become insolvent, and Brown, the indorser, not having been notified, is released; who shall suffer the loss?

A. If the employe or friend of James had called at the bank and inquired for a note made by Jones and voluntarily paid it, the responsibility of the bank would have been very different. But the friend or clerk of James having been notified that James had a note for a given amount due at the bank called, and inquired for it. The note of Jones was given to him as the note of James, and he paid it, supposing it was James's note. It is clear that this money was paid through the error of the bank, and that being thus paid by mistake it can be recovered. The bank took the money of James's "confidant" on the plea or pretense that it had a note made by James then due. It had no such note. It gave a note made by Jones and took that money and must pay it back. The customer who deposited the note for collection has been paid, and the bank in our judgment has no claim on him.

36. Where an indorser of a note or draft wishes to waive protest of same, if he writes the words "protest waived" over his indorsement is that sufficient in order to hold him liable, or should he say "demand and protest waived," in order to hold him? Also, should the waiver be written and signed in another place or simply written above the original indorsement?

A. If the indorser wishes to waive the protesting of the note or draft, it is sufficient for him to write above his signature "protest waived." But waiving the demand (that is the presentation of a note or draft for payment) is alto-

gether another thing. He can waive that too, by writing the waiver above his name.

37. Suppose the unsigned notes of a national bank are stolen and put into circulation, is the bank obliged to redeem them?

A. Where a bank put some of its notes in circulation without the signature of the proper officers, it was held that the institution was responsible for their redemption. But stolen notes unsigned would not impose any such responsibility.

38. B owes A a certain amount, payment of which he puts off from time to time and finally proposes to give C's note for it. A accepts C's note drawn to his (A's) order, neglecting to get any indorsement of B on same, and receipts his bill against B in following form simply: "Paid by note. (Signed) A," no reference to whose note being made thereon. C fails to pay note at maturity, and B now claims that he was released by A accepting C's note. Is that so?

A. The courts hold that the mere fact that a creditor has received from his debtor the note of a third person for the amount of the debt is not even prima facie evidence of payment. The legal effect of accepting, on account of a debt, negotiable paper made or indorsed by the debtor, or any instrument which transfers a right of action against the defendant to a third person, is that of conditional payment, implying an agreement to suspend the remedy on the original demand during the currency of the paper, if on time, or so long as the instrument, if assigned to a third person, remains outstanding in his hands.

39. Where a man dies, leaving paper outstanding on which he is either maker or indorser, can his legal representative (executor or administrator) renew such paper by signing as executor or administrator of the estate and still hold the estate, the same as on the original note?

A. There is no way in which an executor or administrator can bind the decedent's estate by any negotiable instrument. By making, accepting or indorsing such an instrument, he binds himself personally, notwithstanding the fact that he adds to his name the designation of his office as personal representative.

40. Smith gives Jones a note indorsed by Brown in payment for goods. When the note matures Brown wants Jones to renew it and sends his personal note to take up the old one. Can Jones renew the note at Brown's request and without Smith's consent, and still hold Smith on the first note, should Brown fail to pay his?

A. The extension of time to one who is bound for a debt discharges the obligation of all subsequent parties, but only acts as a suspension of the debt against all prior parties. Taking a new note from the maker discharges the indorser; but taking a new note from the indorser does not discharge the maker, he being a prior party, unless there is an express stipulation to that effect. It only suspends the collection; and if the indorser's note is not paid, the maker of the old note can still be sued on that unpaid obligation when the extension terminates by the maturity and dishonor of the second note.

41. Does a judgment obtained upon a note hold good, if the note be lost or destroyed?

A. A judgment obtained upon a note holds good notwithstanding that the note may be lost or destroyed. Even if the loss occurred before suit was brought the contents of the lost paper may be proved and the suit may go on as if there had been no loss.

42. I am administrator of an estate and have had presented to me for payment a note for $150, in which two people "jointly and severally" promise to pay, etc. One of the two signers of the note is living, the other one, who was the party upon whose estate I am administering, is dead. Can I force the holder first to exhaust the one living, who signed the joint note?

A. The law provides that while the estate of a person jointly liable upon a contract with others shall not be discharged by his death, the court may make an order to bring in the proper representative of the deceased, when it is necessary; and where the liability is several as well as joint, the court may order a severance of the action, so that it may proceed separately against the representatives of the deceased and against the surviving defendant or defendants.

43. A note is bought by A, who gives a release to the indorser. A sells the note to B without notice of the release being given. The maker of the note fails to pay it. Can B have any claim against the indorser, who, at the time of the purchase of the note, B supposed to be responsible for it?

A. If B purchased the note (it being negotiable) before maturity, and gave the indorser due notice of its non-payment when due, he can hold him for the payment without regard to A's release. If A wished to release the indorser he should have written "without recourse in any event to," above the signature on the back of the note.

44. Does a receipt worded as follows legally stand as a promissory note: "Boston, Mass., Jan. 1.—Received from A. B. C. $1,000, which I promise to pay on demand at the rate of interest of 5 per cent per annum. R. L. W."?

A. The instrument described by our correspondent is a promissory note. It acknowledges an indebtedness for a definite amount of money, and promises to repay it, upon demand, with interest until it is paid. The only doubt that could arise in the case would be based upon the fact that no payee is definitely named, the document simply reciting that $1,000 has been received from A. B. C. and that the amount will be paid by the maker (to some person not named) upon demand. The instrument is a promissory note because it embodies the promise of a certain person to pay a definite amount of money to another certain person at a date which is, or may be, accurately determined, and that is all that is necessary to constitute a promissory note.

45. J offers his note to B, who declines to take it unless it has a good indorser. J gets S's indorsement and the note is accepted by B. J fails to pay on maturity. S is held for payment but pleads that his name was merely accommodation. Can B, knowing S did not get "value received," hold S?

A. It is true that every contract requires a consideration to support it, but the consideration need not be money, and, whether it is money or not, it need not be paid, or given, or extended directly to the person bound by the contract. For some reason, the exact nature of which is not important, S

was desirous that B should loan money to J. B hesitated to make the loan; but S was so anxious for J to have the money that he agreed to pay it himself in case J did not do so. Upon the strength of that promise, and upon no other consideration, B loaned the money to J. It would be difficult to find any equitable reason why S should not be compelled to fulfill this contract.

46. We hold a note nearly two years overdue, about one-fourth of which has been paid. Now, if a new note is accepted for the remainder of the debt would this make the existing note invalid?

A. When a note is delivered in renewal of a former note, and the original note is not given up but is retained by the creditor, the new note operates only as a suspension of the debt evidenced by the original and is not a satisfaction of such original until it is itself paid. Even where a note is surrendered to the maker, upon the issue by him of a renewal note, this fact does not in itself raise a presumption of the extinguishment of the old note by the new; on the contrary, the courts will presume that the surrender was merely conditional, and that the obligation of the old note is renewed if the substituted note is not duly paid.

47. Why are promissory notes often made out to the order of the maker?

A. Some make out notes to their own order because they wish to receive money thereon and the notes do not represent an account due to another. It often happens that the creditor will ask a debtor to draw his note to his own order so that he may use it if he desires without indorsing it himself.

NUISANCES.

1. On land adjoining my homestead and within a hundred feet of my dwelling house, a cesspool, through which passes sewer water from three houses, is overflowing. This overflow forms a miry pond and finds an outlet through a hole which it has made in the ground and goes, no one knows where. The owner of this cesspool is also the owner of the land in which it stands. I asked him to attend to this unsightly nuisance. He gives no attention whatever to it, although

the warm days now coming will cause it to be very offensive. How can I get this nuisance abated in the quickest and most effective manner?

A. In a clear case of private nuisance, such as this seems to be, the readiest remedy is to be sought in a court of equity. A suit for damages would lie in a court of law, which, however, will usually not order an abatement of the nuisance. A court of equity, on the other hand, will give the plaintiff all the relief to which he is entitled, including an abatement of the nuisance and an assessment of damages.

2. I am living in New Jersey. Opposite are two factories, each having a treble steam whistle which they blow at 6:30, 7, 12 M., 12:30, 1 and 5:30 P.M. in opposition so as to drown each other for about two or three minutes in each instance. There being a case of sickness in my family, can we—the neighbors—compel them by law to abate the above nuisance?

A. By the New Jersey statutes the Board of Health is empowered, "whenever any nuisance, source of foulness, or cause of sickness hazardous to the public health shall be found on private property," to notify the owner to remove the same at his own expense within such time as the said board may deem advisable, and if he does not remove it they may do so at his expense. There is ample authority for considering an annoyance of this kind a nuisance, and if the Board of Health do not act promptly in the matter, the offenders may be enjoined in a court of equity.

PARENT AND CHILD.

1. A boy in play throws a stone at a telegraph pole in the street, the stone hits the pole and glancing breaks a hole in a plate glass window already partly broken. Is the boy's parent liable for the accident?

A. A parent is not liable for any damage done by his minor child unless the act was done under orders from the parent, or with his knowledge and consent, or in the course of some work which the child was doing for the parent at the time. The parent is probably not liable in the case our correspondent puts. He would have been liable if he

had told the child to throw the stone at the pole; if he had told him to throw a lot of stones out of the yard and the damage had been done while the child was obeying this order; or if the parent had seen the child throwing in a way likely to result in the damage, and had not commanded it to stop; there is no reason to suppose that the case falls under any of these heads. If, however, the child wilfully and maliciously injures or destroys property the patient would be held liable for the damage done.

2. My father-in-law has lived with me now six years. He has seven sons and one daughter all better off than we are. My husband is his son and the others contribute nothing to help to support him. Can I claim one dollar a week from his children for my trouble in washing and cleaning after him for six years?

A. The obligation of a child to support an indigent parent is not a common law obligation, but merely statutory. The law does not provide any means by which one of the children may collect from the others for such support in the absence of contract either express or implied. If application is made to the overseers of the poor they will bring the matter to the attention of the court, which will compel the children to contribute to the future support of the parent in proportion to their means.

PARTNERSHIP.

1. A wishes an interest in the business of B. B is willing to give A a certain percentage in the sales which A is willing to accept if B will publish in the papers that he has an interest in the business of B. Can the publication of such a notice by B be in any way construed as a co-partnership?

A. If a person is not named as a partner, and is only announced as one who is given an interest in the business, the rule is, that this is conceded to him as a reward for his services, and does not render him liable as a partner, nor entitle him to act as such in the control of the partnership affairs.

2. Where a firm wishes to retire, can parties buying them out,

with the old firm's consent, continue the business under the old firm name?

A. The law authorizing the continuation of old firm names was limited in the first place to those having business relations with foreign countries. Afterward it was extended to all houses that had done business in a State for five years. The new members, on consent of the old or of a majority of them, must make out a certificate setting forth the facts and file this with the clerk of the county, and have the same printed in a newspaper for four successive weeks.

3. A and B, wishing to enter partnership as general brokers, what legal steps are necessary, if any?

A. No legal sanction whatever is needed to the formation of a partnership and the beginning of a general brokerage business. It would be well to advertise the fact for five successive days under "Copartnership notices" and procure an affidavit of such publication.

4. A partner loans funds belonging to his firm, charging the loan upon the books to the borrower, assuring his partners that he has taken good securities for the same which he has deposited in the safe. If the partner referred to used the money for his own benefit, no loan having been made or securities received as stated by him, what redress would his partners have against him, the money not being returned?

A. One partner cannot maintain an action at law against another to recover an amount claimed by him by reason of any dealing with the partnership funds until there has been a final settlement of the affairs of the firm by discharging its liabilities, collecting its assets and definitely ascertaining the surplus to be divided. The best mode of proceeding in a case like that is for the other members of the firm to bring a suit in equity against the delinquent member, asking for a dissolution and accounting. There should be no doubt of the success of the suit upon the facts stated. After dissolution a suit at law may be maintained for any amount owing by either partner to the others.

5. A is in business, and needing more capital, secures $10,000 from his friend B. B loans him $10,000 for a term of three years, for

which A is to pay B interest at the rate of 6 per cent per annum. They have an understanding between them, either verbally, or written, by which A agrees to pay B, in addition to the 6 per cent interest 20 per cent of the profits. For the first two years the business is successful. The third year it met with reverses and finally failed. Under the above conditions, is B a creditor of A's, or does the arrangement of paying him 20 per cent of the profits make him a partner?

A. Pennsylvania, we believe, is the only state in which there is a statute providing that any person may loan money to an individual, firm or association, upon an agreement to receive a share of the profits of the business for the use of the money so loaned, in lieu of interest; and such agreement, or the receipt of profits under such agreement, shall not make him liable as a co-partner in such business to creditors, except as to the money so loaned, provided that the agreement for the loan be in writing and that the person making the loan does not hold himself out as a general partner. The inference from the existence of this statute would be that where the agreement was not in writing, or where the profits taken were not in lieu of interest, the lender should be considered a general partner. In Pennsylvania, therefore, B would be considered a general partner of A, and liable to creditors as such.

6. With reference to the different sums of money drawn at irregular intervals from the firm's funds by the partner, is it customary to charge his account interest from the date each amount is taken; or is the interest computed on the ledger total at the end of the month?

A. There is no uniform rule or custom in regard to charging interest on money drawn by a partner in the firm where interest is to be paid. Some average the account and charge from the average date; others from the first of the month on all sums drawn during the previous 30 days. In some cases where the amount is considerable and decreases the capital stock, interest is charged directly from the day it was drawn. The more common custom, where a member of the firm is to pay interest on the money he draws from

it, is to average the account precisely as if it was paid to a stranger.

7. Is there any difference between a special and a silent partner?

A. A silent partner is one not engaged in the active business of the firm, or not known to be so engaged, but he may be a general partner and liable as such for all the obligations of the partnership. A special partner is one whose liability is limited to the amount of his special contribution. But in order to secure this exemption the law providing for it must be strictly obeyed. The money must be actually contributed and the details of publication, etc., must conform to the legal requirements.

8. A, B and C engage in business; their note is protested. I call on them regarding it and they give me a check and I return the note to them. But at the time of giving the check only A and B are partners. The check is protested; can I hold C?

A. Unless it was distinctly understood that the check of A and B was accepted in place of the obligation of A, B and C, the latter is still held and judgment may be recovered against him.

9. A firm of twenty-one years' standing is dissolved by mutual consent, the retiring partner making great concessions to his associate, who continues the business, buying out the old firm. The successor agrees to liquidate the affairs of the old concern for their mutual benefit, and is to have the occupancy of the store building, which continues their joint property, rent free during ten months, no further agreement being made regarding compensation for these services. Has he (the successor) a right to bring in a bill for clerk hire?

A. A liquidating partner, in the absence of a special agreement, can charge nothing for his own services. But if he is obliged to employ clerical help or to fee a lawyer, these are legitimate charges against the common estate. If the continuing partner, in consideration of the sale to him and of the free rental for ten months, agreed to settle the old business at his own proper cost, he cannot charge for clerk hire. If he did not, and a clerk is necessary, he can charge the outlay to the common account.

10. Is there a law requiring a person or firm doing business as dealers, manufacturers or brokers to keep regular books of account?

A. The United States Bankrupt act being in force, it is not safe for any business man to do business without keeping a regular set of books, for if misfortune overtakes him such neglect prevents his discharge from his debts. It is always the part of wisdom to keep such records, but there is no law requiring it.

11. A and B are partners having a partnership agreement, stating that after death of either of the two, the surviving partner pay to the widow or executor of the deceased such amount as may be to his credit at the first of January prior to his death; such amount to be paid in cash or indorsed notes within a stipulated reasonable time. Is such an agreement a fair one and binding on the surviving partner?

A. Such an agreement, if duly executed, might be legally enforced, but we do not think it would be certain to be fair. Suppose each partner to have had on the first of last January $20,000 to his credit. Suppose one of them dies tomorrow or next week. If the current year's business has been a very profitable one, the estate of the deceased partner would get nothing of it, and the heirs could justly complain. If the year's business has been unprofitable it would be unfair to ask the surviving partner to settle with the deceased partner's estate, as the books stood last January.

12. As a broker I sell canned goods for a canner at 2½ per cent commission. I get a party to buy with me on joint account. There is a loss in the settlement. Should my commission and also the 1 per cent off for cash go to the credit of the investment?

A. It is competent for one member of a firm to make such arrangements as are mutually satisfactory regarding the price at which goods bought by him are to be transferred to the firm. But in the absence of such express agreement, any partner making purchases or sales on account of the partnership is bound to act exclusively for its benefit. One partner cannot charge the firm with commissions on sales or purchases in the absence of an express agreement to that effect.

13. A and B are partners. A has the management of the office and B the care of stock. Six months ago A had $1,000 to his credit in excess of B. A told the clerk to draw him the firm's note for the amount and A signs firm's name to it, without the knowledge or consent of B. Five months later B learns that A holds the note and asks to see it. A cannot find it and forgets whether he ever had one or not; the clerk is also in doubt. 1. Has one member of a firm a legal right to draw the firm's note without the consent of the other? 2. Has A a right to make another note in place of the one lost?

A. 1. Any general partner in a firm can issue the firm's note without consulting the other member of the firm.

2. There is nothing short of a legal injunction to prevent a partner from signing the firm's name to as many notes, whether original, duplicates, or triplicates, as he chooses to issue.

14. Has a general partner retiring from business, when remaining partners assume assets and liabilities, any further responsibilities connected with the old firm?

A. The fact that the remaining partners assume all the liabilities will not deprive the creditors in case these liabilities are not paid when due, of their claims on the special partner to the full extent of the capital he invested.

15. A firm moves into a new building on January 1. New fixtures, such as shelving, etc., are required for the proper handling of their wares. On the 31st of December of the same year, one of the members of the firm retires from the business, his term expiring by limitation. How should the fixtures be inventoried?

A. The shelving and the like of a store is chiefly part of the expense account, and in taking account of stock are only to be valued for what the stuff would bring if sold then and there to a third party.

16. In the case of the dissolution of a firm by the death of a partner, who owns the good will?

A. The early cases held that upon the death of a partner his interest in the good will ceased in all cases, and that it survived to the remaining partners as their property. More modern decisions have so far modified this doctrine as to hold that so much of the good will as attaches merely

to the goods, the place and the existing contracts, belongs to all the partners; but so much of it as arises from the manner of carrying on the business, and might go with the survivors wherever they saw fit to engage in the same occupation, belongs to the survivors. The survivor is at liberty, unless restrained by agreement, to carry on business on his own account, and sometimes in the old place, and he is under no obligation to sell these advantages for the benefit of the estate of a deceased partner. Where the good will attaches to a lease or to a license to use any species of property, this may be ordered to be sold in the interest of a deceased partner's estate. But mere good will, not attaching to any other right, belongs to the survivor.

17. A regular and inactive member of a firm loans the firm several thousand dollars and receives notes for the amount, bearing interest at 8 per cent. The interest is paid at maturity of notes and a new note given for the aggregate amount of former notes, this note to bear interest at 6 per cent. Could the member of the firm who has charge of the finances plead usury on the latter note, and would the usury laws hold good in this case?

A. If the original note was usurious, the new note given in its stead would be tainted with the original usury. But upon the principle of contingency or hazard, where persons are in partnership, an advantage to be taken out of the trade may be measured in any way agreed on without subjecting the agreement to the charge of usury, and though one partner retires, still, if he remains liable to be sued, the agreement for such advantage has been held not to be usurious.

18. What is the law governing co-partnership with a minor?

A. It is not safe to enter into partnership with a minor, since, as a rule, his contracts are voidable, if he chooses to plead his infancy.

19. Where one of two partners devotes very much more of his time to the business than the other what method do the courts follow in affixing a value to this extra attention to business?

A. If one partner attends more strictly to the business of the firm than another, or even if one partner gives the

whole of his time to the business, while the other gives none of his, the partner so attending to the business is not entitled to any extra compensation unless the partnership articles so provide.

20. A, B & C are in partnership and buy goods in that name. A and C have practically the entire capital in the concern, B holding but a small share. The partnership ran two stores; they dissolve partnership and B takes for his interest in the business one of the stores, which is agreed to by A and C. While this partnership existed the store now owned by B was indebted for goods purchased in the name of A, B & C, who were considered perfectly responsible for all their debts. Can A, B & C be held responsible for debts contracted in their name while the partnership existed or must creditors look to B for settlement of bills charged to A, B & C and shipped to the store now occupied by B?

A. When the firm of A, B and C incurs a debt the claim is enforceable either against the firm as a whole or against any partner as an individual. Having so bound themselves the partners cannot afterwards take any action whatever which will release them, or any one of them, unless the creditor consents to such release and receives some valuable consideration for such consent. The partners may make any arrangement they choose among themselves so that as among them, any partner who is compelled to pay the debt may recover of another partner or of the firm; but this arrangement will not affect anyone outside the firm, and if the partnership as a whole, or any member of it, is sued upon the debt the plaintiff will prevail.

21. Two partners continue in business, after the expiration of the original term of partnership, without any new agreement. If one partner dies how is the business to be wound up?

A. When one of the two or more partners dies the firm is immediately dissolved, unless there is a provision to the contrary in the partnership articles. Where, as in this case, the firm consisted of only two partners it becomes the duty of the survivor to proceed immediately to wind up the business and make a proper distribution of the firm's assets.

22. A is one of three partners. A three-year agreement was

drawn up with the consent of all partners, but never signed, said agreement still having almost a year to run if in force. Can B or B and C, together or separately, place any legal restraint on A, who wishes to step down and out, and re-engage in the same line of business, at the same time voluntarily relinquishing all claims as partner of said B and C, and having no capital invested?

A. A contract which "by its terms is not to be performed within one year from the making thereof" shall be void "unless it, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged therewith." A contract to carry on a partnership business for three years is clearly a contract which by its terms is not to be performed within one year, and if there is no signed memorandum of it, as there was not in this case, it would seem to be void under the provisions of the statute. The courts, however, have not always taken this view of the case. It has been doubted whether the statute has any reference to partnership agreements at all; and some courts which have been willing to admit that such agreements fall within its terms are still of the opinion that if the partnership business is once begun the contract remains binding for the full term covered by it even though there be no signed memorandum.

23. A and B are partners in business, with a clause in their articles of co-partnership permitting either partner to terminate the partnership at a date six months after notice to the other partner in writing. At the expiration of the period for which the partnership was to run they continue in business without having a new agreement drawn. How does the above clause operate?

A. When a partnership is continued beyond the time originally fixed, and no new terms are agreed upon, it becomes a partnership, not for any fixed and definite time, but simply at will. Any partner may declare the firm dissolved whenever he chooses to do so. The continued partnership, however, is presumed to be upon the same terms and conditions, so far as these are applicable, as those which prevailed before the expiration of the original term. The clause above quoted which binds either partner to give

written notice six months before his intention to retire, is not consistent with a partnership at will, and such a provision is not presumed to form any part of the new implied articles of partnership.

24. A imports a shipment of goods at an invoice cost of $10,000. B agrees to advance $6,000 thereon upon condition that he receive half of the profits, after all the goods are sold. A sells some of the goods and contrary to agreement retains part of the proceeds, say $1,500. B sells some of the goods, but the proceeds thereof, together with such part of the proceeds of B's sales as he received, leave him about $400 short on the $6,000 he advanced. A small stock is left on hand in B's possession and he calls on A to make good the $400 he is short and take back the goods still on hand. Was there a partnership?

A. Ordinarily when two persons contribute money to a joint venture, and the agreement is that both shall share in the profits, these two persons are held to be partners in the enterprise. All the circumstances of each case must be taken into consideration, however, and there are cases in which the whole evidence does not establish a partnership even where both contribute to the capital and share in the profits. The most important consideration, in attempting to determine whether there is a partnership or not, is the understanding with which the money of each was furnished. In the present case, for example, if it was understood that B was to have his principal back in any case, and was to have part of the profits if any were realized, then it was a loan and not a contribution as partner. But if it was understood that B was not to have any claim upon A for his $6,000, but was to have it back only in case it were not lost in the business, then it was a partnership.

25. Two persons enter into business; the one partner puts up all the money and agrees to give the other partner half of the profits for his service; the latter draws a weekly allowance. During the business career no money is made and the business is sold out and no money is made by the sale. Can the one partner that put in no money claim half of the principal?

A. It does not clearly appear in this case whether the two persons are partners or simply employer and employe.

It is said that one of them furnishes all of the capital and the other is to have "half of the profits for his services." It is not uncommon for an agent to be employed upon an agreement making his compensation to depend upon the profits realized. In any case, however, the person named as furnishing no part of the capital is not entitled to any part of it when the relation is dissolved.

26. In a case of a partnership of three people, with two more years to run, a salesman who is a relative of some of the partners demands to be admitted to the firm now. All three partners acknowledge that the demand is premature and unreasonable, and yet two of them who have the largest financial interests decide to favor this demand and insist on his admittance. What are their rights?

A. The admission of a new member to a firm always implies a dissolution of the former partnership. A firm consisting of four partners is not the same concern as a firm consisting of three of those same persons, and the second firm cannot be formed until the first has been dissolved. It follows that the plan advocated by the two partners, in the case under consideration, involves a dissolution of the firm before the time fixed upon for such dissolution in the articles of partnership, and without the consent of the third partner. Some courts refuse to allow one or more partners to dissolve the partnership before the expiration of the term unless all the partners agree to such dissolution or unless the wish to dissolve is founded upon some such reasonable ground as the completion of the work for which the partnership was formed, the impossibility of success, the misconduct of one partner, or the like. A large majority of the courts, however, refuse to compel any partner to remain in the firm after he has determined to leave it.

27. I am in the grocery business and my neighbor next adjoining is in the market business. I had thought of the plan of cutting a wide archway connecting the two stores and then placing a sign up over both stores reading "Clinton Market" and have both store delivery wagons lettered the same, but still conduct each business as a separate business. Would either store be liable for the other's debts?

A. Such an arrangement might result, in certain cases, in

making the owner of one business liable for debts or upon contracts of the other. No person could hold one bound for debts or acts of the other if he knew that they were not partners but anyone who had not been informed of this fact would be authorized to suppose from the various appearances described that the "Clinton Market" was a single concern, and to hold either of the proprietors liable for a debt contracted by the other.

28. I have been in the grocery business for sixteen years. About six years ago a practical butcher wanted me to put in fresh meat. We rented the store next door, cut an arch between and started in business. There was no understanding as to partnership or how we should settle. I furnished the capital, rented the store, gave the place a standing by becoming responsible to the meat houses and arranged for the keeping of the books. Now my partner wants to pull out and claims he ought to have a salary and half the profits. What is your opinion in the matter?

A. Inasmuch as there was in this case no definite agreement as to the length of time during which the partnership should continue, it is to be regarded merely as a partnership at will, and either partner can put an end to it at any time without previous notice. As there was no agreement specifying the basis upon which surplus earnings should be divided the acts of the partners in this respect will be taken as conclusive evidence of an implied agreement upon that point. Neither partner can ask to have anything returned to the firm which the other has been allowed to withdraw as his share of the earnings, and as long as the partnership continues it must be upon the basis now observed by the tacit consent of both unless they mutually agree to change it.

29. A and B were partners under the firm name of A & B. A died two and a half years ago and his widow (C) was appointed administratrix. B rendered a statement to C showing A was indebted to the firm, and C without examination took a receipt from B which released the estate of A from all indebtedness in consideration of one dollar. C gave no formal release to B. It was then verbally agreed that B continue the business under the old firm name, he agreeing to pay C some consideration and actually doing so, in approximately regular weekly payments, until recently when he stopped payments

and repudiated the arrangement, although continuing the business under the old name. Can C now compel B to produce the old books of the firm to prove his (B's) statement correct?

A. The administratrix or other personal representative of a deceased partner is entitled to examine the books and accounts of the firm in order to know what the claims of the estate are. This right has not been waived by anything which the administratrix is described as having done, and the privilege is still hers.

30. Who may be considered the senior partner in a firm; the one oldest in years or the one longest a partner in the firm, although younger in years?

A. There is no legal distinction between the senior member of a firm and any other member. The rights of all are the same under the law. Any distinction there may be is only such as is made in ordinary conversation. When a firm has been long in existence, with changes in its membership from time to time, it is usually a fact that the person who has longest been a member of the firm is the oldest in years, so that the senior partner is, at the same time, the oldest of the partners and that one who has been longest connected with the firm. Where these facts do not coincide—when a partner younger in years than the others has been a member of the firm for a longer period than any one of them—we believe the term "senior partner" is usually employed as referring to him.

31. Two men start a partnership agreeing to share gains and losses equally; after a certain period they pay all liabilities with the exception of A, capital, $5,000; B, capital, 0. They have cash assets of $10,000 to cover the above. Does each man take $5,000 or does A take $7,500 and B $2,500?

A. In winding up the business of a partnership debts and claims are to be paid in this order: (1) Debts to others than partners; (2) to each partner his advances; (3) to each partner his capital; (4) the remainder to be divided as profits. In this case items 1 and 2 have been attended to. The next step is to return to A his $5,000; then the remaining $5,000 is to be divided equally between A and B.

32. Do the laws require that a special partner in a business shall be paid off first in full, before the general partners get their share of what remains after all debts have been paid?

A. The laws do not require that a special partner shall have any preference over general partners in the distribution of assets after payment of the partnership debts. That is a matter for the partners to arrange among themselves. All that the law looks out for is the protection of creditors of the firm; these being paid, the partners may divide what remains in accordance with any plan that best suits them.

33. Can one member of a firm be released from a judgment without releasing the other? Also, can one bondsman be released without releasing all?

A. It has been held in many of the States that the rule of the common law by which the release of one partner operates as a release of his co-partners does not apply when it is manifest that the intention was to confine the release to one. Where the joint characteristics are wholly eliminated from the bond, and it is distinctly made a several undertaking, a release of one surety has sometimes been allowed without operating as a discharge of the others.

34. A and B formed a co-partnership for three years, A contributing $50,000 and B $5,000. The co-partnership contract states that the capital is to bear interest at 6 per cent. The business not being successful, the partners mutually agreed to give up business, and the stock and fixtures were sold. The firm had no liabilities; the outstanding accounts amounting to about $40,000. When does the capital cease to bear interest?

A. To comply with the partnership contract interest should be allowed on the capital remaining to the credit of either partner until the final dividend is paid.

35. A firm of two partners failed some time ago and we have a judgment against them for over $10,000. One of the partners, who is abundantly able to pay the whole amount, refuses to pay anything, and says he is doing business in his wife's name. The other partner, who is also doing business in his wife's name, is anxious to compromise. Can we settle with and discharge the one without discharging the other partner?

A. It was formerly a rule of law that a release of one partner, or of one party to a debt, was a release of all. But the courts have now come to recognize the right of a creditor to release one and hold the rest provided he especially reserves this right in the releasing instrument.

36. A partnership agreement contains a clause prohibiting either of the subscribing partners from using the firm name to make or indorse any promissory note as an accommodation. Notwithstanding this agreement one of the partners indorses with the firm name a promissory note made by a personal friend. This was done without the knowledge of the other partners, and no consideration for the indorsement was received by either the firm or the individual partner. Does this act bind the firm?

A. The capacity in which a partner binds his firm by contract is simply as an agent of the firm. His powers in this respect are very much like those of any other agent; he has, in the first place, the authority expressly conferred upon him by the firm, and a right to do everything necessary to make that authority effective, and, in the second place, he has all the powers which are usually conferred upon agents of his class unless those with whom he is dealing know that the principals have expressly withheld some of these usual powers from this particular agent. But the courts hold that a partner never can be held to have an implied authority to bind the firm by an accommodation indorsement. However, as a trading firm, accustomed to issuing or indorsing notes in the course of its business, the partners would have implied authority to sign or indorse the same, and if there is nothing upon the face of a paper to show that the indorsement of the firm is a mere accommodation indorsement, and if the holder had no notice of the fact when he came into possession of the paper, and if he took it in entire good faith, in the usual course of business, for value and before maturity, he can hold the firm upon the indorsement. The partner who signed the firm name is individually bound in any case.

37. One member of a firm which has foreign business relations retires. Can the other partner continue business under the old style

firm name, composed of the name of his retiring partner and his own, without the consent of his partner?

A. It does not appear in this case whether the continuing partner has or has not purchased the share of the retiring partner. The rule allowing the continued use of partnership names in certain cases and after compliance with certain formalities is intended simply to meet the objection of illegality. It does not give to those continuing a business a right to the name as against a retiring partner.

38. A firm has been in existence for a number of years without any written contract between the partners. The partner having the larger capital now thinks of dissolving this firm and establishing a new one, with other partners, to carry on the same line of business. How soon can he bring the partnership to an end?

A. When a partnership is carried on without any express agreement as to duration it is a partnership at will, and either partner may cause a dissolution of it at any time by merely announcing his intention to that effect. After the partnership is dissolved, and the business wound up, either member of the firm may continue in the same line of business upon his sole account or in connection with such other partners as he may select. When the business has been wound up, and the debts paid, each partner is entitled to his proportionate share of the remaining assets, including the value of the good will and other intangible property, if this has been included in the sale.

39. A purchases the fixtures of a grocery store at B's request and for B's benefit, and they enter into a contract as follows: B takes the property and carries on the business in his own name and agrees to turn over to A one-half of the profits as payment for the use of the fixtures, etc.—the stock not being taken into account in any way. This agreement is for one year, and the understanding is that B shall own the property when he has paid to A the cost of the property. A is not known to any third parties. Can A be held for B's debts as a partner?

A. If A is to have one-half of the profits of the business during the first year, whether those profits are great or small, whether they are greater or less than his advancement, and

if he has no other claim against B, this is sufficient to make A a partner as to third persons within the decisions. But if the lender is to be paid at all events, and the arrangement is simply that he is to receive one-half the profits of the business until he is paid, and no longer, this is not sufficient to make him a partner.

40. A and B form a partnership and after continuing business for a time B buys A out and states on his papers, orders, etc., that he is the successor of the firm of A & B, and changes the name of the house to B. B now claims that he is not legally responsible for the debts incurred by the firm of A & B. Who is legally responsible in this matter?

A. In the case which our correspondent puts B is legally responsible for the debts of the firm of A & B until they are paid or barred by the statute of limitations.

41. A, B and C are in partnership and are doing business under that firm name. B has not the signature of the firm but sells out the partnership business. Is that sale legal or not?

A. If the buyer was a party to the fraud, or knew of it, or had good reason to suspect it, the sale will not stand. If the buyer bought in good faith, the authorities are not perfectly agreed as to the effect of the sale. But the weight of opinion is that though a partner may bind the firm in any transaction within the scope of the firm's business, and may make a legal sale of the whole stock in trade, he may not bind them by a transaction such as the one under consideration, which amounts to a dissolution of the firm.

42. Will a codicil to a partnership agreement renewing the partnership for another term of years with certain alterations specified in it answer the purpose as well as drawing up new papers?

A. When any question arises under articles of partnership the courts resort to any means in their power to learn what the contract was. For this purpose articles of agreement which have been modified in the manner suggested by our correspondent are valid evidence. The whole document will be construed together, and the contract will be enforced.

43. We have been selling the firm of A. & B. We receive a dis-

solution notice, B retiring, A assuming all assets and liabilities and signing in liquidation. Some time later A fails and we look to B for payment of the debt. Is he liable?

A. If A and B owe money to C they may make any arrangement they choose betwen themselves, as to which of them shall pay the whole debt, but the creditor is not bound by this arrangement unless he assents to it, nor, even then, unless there is some consideration of one kind or another for his assent. The mere fact that he is informed of the arrangement and says nothing about it either way is not sufficient to bind him.

44. 1. What is a limited partnership? How does it differ from a regular partnership?

2. What is a limited stock company?

A. 1. In an ordinary partnership each partner is an agent of the firm and may bind it by contract. Each partner is also liable, without limit, for all the debts of the firm. He may have invested only $10,000 in the business, but as many dollars as he owns can be taken by the firm creditors if that amount is owing. In many states a limited partnership consists of one or more general partners, having unlimited liability for the debts of the firm as in the case of an ordinary partnership, and of one or more special partners, who put in a definite amount of capital and are not liable beyond that amount so long as they obey the law. Record of certain facts must be made in the county clerk's office, showing, among other things, that the partnership is limited, and not general, giving the names of all the partners, telling which are general and which special, and how much each special partner has invested. The name of the firm must not contain the name of any special partner; a sign placed conspicuously on the business house or office of the firm must show who the partners are, and which are general and which special; a special partner must have nothing to do with the actual management of the business or the making of contracts, though he may advise as to any of these matters; a special partner must not take out in the

form of interest, profits, or in any guise, so much money that his original capital may be impaired. A violation of any of these rules by a special partner, or with his consent, will make him liable like a general partner.

2. What is sometimes called a limited stock company is frequently a business corporation. It is simply a corporation formed much like a railroad or other quasi-public corporation, except that it is formed to carry on ordinary business pursuits. The stockholders are liable like stockholders in other corporations, unless they see fit to form what is known as a "full liability corporation," in which case they insert a notice to that effect in their articles of incorporation, and each stockholder is then liable for all the debts of the company precisely like a member of a general partnership.

45. A testator making bequests and directing his executors to create trust funds for his children, has at the time of his death all his personal property invested in business. No provision is made in the will with reference to the continuance of such, and the same is carried on by the surviving partners as usual. I would therefore like to know whether the accumulated profit on the capital invested with the surviving partners is the income for the children as it would be had the executors created trust funds as directed, or does such profit go to swell the principal?

A. In a case such as this the survivors of a deceased partner are held to be trustees of his proportion of the partnership property, and they are liable in equity to account as such. If they continue in business with the partnership stock, they do so at their own risk. They then become liable to bear all the losses and to account for interest upon the deceased partner's share of the property or for the profits upon it, at the option of the latter's representative. They are not at liberty to add the profits to the principal already invested in the business.

46. One of the partners retires from a firm before the expiration of the lease of the store; the remaining partner assuming all liabilities of the firm, continues to pay the rent for several subsequent quarters. When the last quarter's rent becomes due, the landlord, instead of insisting on payment of the full amount, simply accepts a payment on account, without notifying the retiring partner at the time

of the non-receipt of rent due, although the landlord had been duly notified of the latter's withdrawal. Some months afterward the firm fails, and then, for the first time, he calls upon the person who had withdrawn from the house over a year before the failure for payment of the rent. Do you consider the landlord has any claim on this party?

A. The landlord has a good claim against the solvent member of the firm for the rent still due under a lease to which he was a party.

47. John Smith & Co., general merchants, effected an insurance on their stock of goods. The agent writing the policy issued same to John Smith only. A loss occurred under this policy, and the adjuster was promptly on the ground and adjudged the loss to be $5,000 (the policy in question was for $3,000). John Smith was proffered settlement on a basis of 50 per cent of amount of policy, the adjuster assuming that but a one-half interest, that of John Smith only, was insured under the policy in question. The adjuster finally concluded that as litigation would cost something, he would on that account settle with John Smith at 62½ per cent of the amount of policy. The insurance agent was instructed to issue a policy to the firm of John Smith & Co.

A. There is no doubt that it is within the power of one partner to insure the property of the partnership for the benefit of the firm. Where there is evidence that any transaction was a partnership matter and that both parties to the contract knew the business was being done in behalf of the firm, it will be held to be a partnership transaction. It may be shown that the insured is in no way responsible for, and has not contributed to the mistake, but has relied upon the insurer or his agent to prepare the application and policy. Moreover, it has been held in a case very much like that under discussion that a partner has an insurable interest to the amount of the value of the entire stock. Goods were owned by two jointly, and a policy was applied for in the name of both, but was issued in the name of one. The court held that each partner being liable *in solido* for the engagements of the partnership had an insurable interest in the whole stock, and on receipt for a loss, must account to the firm.

48. I am the executor of W., deceased. W had been in business

with H, and at the time of W's death accounts were not settled but in course of litigation. I asked H over and over again for an accounting, but could not get it from him. However, I received cash from H on account of W, deceased, from time to time against receipt on account and (or) against no receipt at all. Amounts paid and charged are not questioned. Thus matters went for years and H dies; then H's executor draws up the account and claims that I, as executor of W, have overdrawn and owe the old firm a certain sum with interest. Both estates are solvent, and neither fully divided among the respective heirs. Must I return amount received?

A. An equitable action for money had and received will lie against any one who has received money to which he was not entitled, provided it can be shown that the person making the payment believed in and acted upon a state of facts which did not exist, and that the payee's position has not been changed in consequence of payment, so that it would be inequitable to allow a recovery. If the money paid to our correspondent was paid under a mistake as to the facts, it can be recovered. Interest cannot be collected, however, except from the time when the accounts were finally adjusted and notice of the deficiency was given to the person from whom it was due.

49. A hires a store for business purposes, signing a lease made out to him for three years. Previous to or after signing the lease A takes in B and C as silent partners, without advertising the partnership, and the business is conducted entirely in A's name. Now in the event of A's not being able to pay the rent, can B and C be held for same?

A. B and C can be held as general partners and made liable for all the debts of the concern. The only way to preserve the limited liability of a special partner is to advertise it according to law. A concealed partner is liable, when the facts become known, precisely the same as if his name had been used.

50. A says to B that he knows of a land scheme, out of which a large profit can be realized, if B will consent with C to put up $2,500 cash each, A agreeing to purchase and sell the land for 33⅓ per cent of the net profits. The agreement is made as above, a company formed and incorporated, and stock sold to D, E and F, but after a while it is found that A is using the proceeds of sales for his own benefit. When B calls A to account A agrees to make restitution as far as lay

in his power, and showing B an agreement he (A) had made with C to advance him $750 of the $2,500 above mentioned, on condition that the $750 be refunded to A from the first money realized by C, B gets A to assign the agreement he entered into with C to the company. B and C are compelled to loan to the company (outside of the original investment for which original investment they received stock in equal shares) an additional sum of $3,000 each. B and C then agree to buy, and do buy, from the smaller stockholders, D, E and F, their stock in exchange for land at the present market price, and then consent to divide the remaining land, worth at the present market price about $6,000, also $5,000 worth of land notes (the proceeds of sales already made) between them. B claims that inasmuch as he has paid in $5,500 while C has paid $5,500 less the $750 advanced him by A, he is entitled to a larger share of the $11,000 of lands and notes than C. On the other hand, C contends that while he had agreed to pay off the smaller stockholders in land, the stock was actually worth nothing, and that therefore B could only base the division upon the later advances, as the land and notes, if sold under foreclosure, would probably hardly bring the amount of $6,000 advanced to the company, and that therefore the stock, and consequently the $750 assigned, would be worthless. Is B's or C's interpretation of the manner of division the correct one?

A. It seems to us that B having received back part of the capital he invested is not entitled to an equal share in the division, unless it can be shown that the money was paid him, because A, as the agent or partner of C (before B came in) had misled him as to the merits of the undertaking and wished to square the matter with him.

51. A member of a firm makes a note individually to order of his firm and indorses the firm name. It is passed to third party for value. Can the firm be held for the indorsement?

A. Each partner has complete authority to use the partnership name either as makers or indorsers; and when so used, the note will be deemed to be made on the partnership account, and bind it accordingly, unless upon the face of the note, or upon collateral proof it is clearly established that the party taking it had full notice that the note was drawn or indorsed for purposes and objects not within the partnership business.

52. If A, B and C to-day constitute the firm of A & Co., and A

retires and becomes a special partner, can we not continue as A & Co. if we publish A as special partner only?

Can a firm composed of A, special partner, and B and C general partners, do business as C, B & Co., using "Co."?

A. The law formerly prohibited the use in the title of a firm of the name of a special partner, and if such name was used, with his privity he became liable as a general partner. But under the act allowing the continuance of partnership names where the old firm has been in existence in some States for several years, or had business relations with foreign countries, the title of a firm which has been A & Co. in which A, B and C have been general partners, may be continued with B and C as general partners, and A as special partner (providing the old firm is within the foregoing description) on condition that the plan of the certificate and advertising conform to the law; and the further condition that the new partnership shall put upon some conspicuous place on the outside and in front of the building in which it has its chief place of business some sign on which shall be painted in legible English characters all the names in full of all the members of said partnership. In a new partnership "and Co." or "& Co." cannot be used when it represents no general partner.

53. A senior partner on account of ill health is about to retire from business. The junior partner wishes to continue the business. Should the senior partner consent to have his name used under a new arrangement and only invest, say, $100, would he be liable for any more than that amount as special partner under the new arrangement?

A. A limited partnership may be formed under the laws and a special partner, by complying strictly with the statute, may limit his possible loss to the amount of his capital, whatever it may be. But the special partner's name must not be used as part of the firm title.

54. In the formation of a partnership A desires to enter as special partner. He would take no active part in its doings here, but as he is a resident abroad would there be called on to act as buying and disbursing agent for the firm. Would this under the laws class him as an active partner and render him liable beyond his share of capital?

A. A special partner may loan money to, or pay money for, the partnership use and let his name and credit for the partnership in any business (the business so negotiated not being binding on the firm until approved by a general partner), but his agency cannot go further. In the case above presented, he would not be liable beyond his special capital. His actions are limited by statute. His services are restricted and he must be careful not to mislead.

PARTY WALLS.

(See also Real Estate.)

1. A and B own houses adjoining each other. Both houses stand about eight feet from the building line of the street. There is a party wall between them. A wishes to build a new house and extend it to the building line. The column of B's house in front is on the party line the same as the party wall. Can A cut off the column in front of the party line and extend the building over the party line of the main building?

A. The owner of land may of course build on such part of it as he pleases. In the case put by our correspondent A is entitled to extend his house to the building line, and in doing so to remove any obstructions that may be in the way, unless he has covenanted to allow them to remain. But in so building he is confined strictly to the use of his own ground. He may not extend the party wall to the line of the street, and thus occupy a part of his neighbor's land not yet built upon.

PASSPORTS.

(See also Citizenship and Naturalization.)

1. How long will a passport issued by the Secretary of State hold good for traveling in Europe?

A. The use of the present form of United States passport is limited to two years.

PATENTS.

1. If A secures a patent for a process or preparation containing articles 1, 2 and 3, and B should subsequently improve that prepara-

tion or process by adding two additional articles, say 4 and 5, which make the preparation more effective for the use to which it is intended, would B, under these conditions, be entitled to a patent?

A. If A has a patent on a preparation containing articles 1, 2 and 3, B cannot lawfully make what is practically the same preparation by adding two other ingredients which do not change the essential character of the preparation and are put in only that the composition may differ to that extent from the other. Neither is he allowed to sell a preparation in which his added ingredients are a mere equivalent for something contained in A's compound. In short, B's preparation is an infringement upon A's if it is substantially the same composition and performs the same function in practically the same way. But, if B's is, as our correspondent states, more effective than A's, if he produces a materially greater or different effect, it may be used.

2. What is the process called by which an inventor still working on his machine may protect himself until his invention is perfected? How long will the protection last? What is the expense?

A. When an inventor desires further time in which to perfect his invention the statutory provision under which he may be protected meanwhile provides for the filing in the patent office of what is known as a caveat, a document setting forth the distinguishing characteristics of his invention and praying protection of his right until it shall have been perfected. This will prevent any other inventor of the same machine or device from forestalling him during the year for which the caveat is operative. The fee to be paid on filing a caveat is $10.

3. Must the inventor of an article also invent the machinery necessary for its manufacture?

A. The inventor of an article need not, in order to secure a patent upon it, make the machinery necessary to manufacture the article; neither is he bound to make for himself the various parts of which his patented article consists, or any of them. If he can take wheels, and springs and

levers, no one of which could be patented alone, and so combine them that they make up a different machine from any formerly used, he may patent that machine.

4. Is there any legal objection to using the term "patent applied for" on an article, when, as a matter of fact, a patent has not been applied for, but it is the intention to apply for one?

A. There seems to be no legal impediment at least in the way of affixing to an article the words "patent applied for" when the fact is otherwise. The law provides a penalty only for the use in connection with an invention of the word "patent" or "any word importing that the same is patented, for the purpose of deceiving the public." On the other hand, however, nothing is to be gained ordinarily, by representing that a patent has been applied for when no such application has been made.

5. Can one manufacturer take the invention of another manufacturer who has constructed an implement which has been on the market for from one to three years, and have the article patented as his own invention if the first party has not secured a patent to cover the device?

A. A patent may be properly granted in this country only to a "person who has invented or discovered any new and useful art, machine, manufacture or composition of matter, or any new and useful improvements thereof, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application."

6. We received an order from an English house for a second-hand machine which is patented in this country and in England. It is sold outright here, but leased on a royalty in England, by a party who has bought of the American inventor the patent rights for that country. We shipped this machine according to the order, and, as per terms of sale, the machine to be delivered on acceptance of draft. In due time the party accepted the draft and received the machine, which he set up in his factory ready to run. After doing all this the party holding

the patent rights learns that the buyer has the machine and notifies him not to use it, with explanations, without their consent, and the buyer now refuses to pay his acceptance and asks us to take back the machine. What is our right in the premises?

A. If anyone who has a right to sell a patented article does sell it and deliver it, he has done his full duty under the contract and is entitled to the purchase price. If the buyer chooses to carry the article to another country, or to have it delivered there, the seller may properly assume that the buyer has made satisfactory arrangements to use the article in that place. It is the buyer's business to attend to all these matters, and the seller may take it for granted that he has done so. Our correspondent is entitled to recover in this case.

7. A has a patent on a paper bag. B takes out a patent on a bag superior to A's. B commences to manufacture under his patent, which is likely to entirely supersede A's. B sells his right to A; the latter refuses to supply the demand under B's patent until the expiration of his own patent. Does this refusal to supply the public demand endanger the validity of the patent right bought of B?

A. Under existing law, based upon the provision of the Constitution of the United States giving Congress the power "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries," a patent is, during the term for which it is granted, the exclusive property of the owner, and he has the same right to use, or not use it, sell it, or retain it, as he has to control the disposition of any other personal property.

8. An English inventor sells his patent to an American manufacturer. We can purchase the article manufactured under above patent from various manufacturers in England. Will our importing and selling of the article in this country make us subject to penalty and liable to damage suit on the part of the American purchaser of the patent?

A. A patent granted by the United States government gives to the person owning it the exclusive right to make, use or sell within this country the article patented. If, therefore, the United States patent was assigned to the American

manufacturer, in the case referred to by our correspondent, any one making, using or selling the article in this country, without his permission, would be guilty of an infringement. But if what was conveyed to the American manufacturer was simply a license to manufacture and sell in this country under the United States patent, it would be competent for any one to buy the article abroad and use it here. The above assumes that the English inventor spoken of has also a United States patent on the article described. If he has not, there is nothing in the way of its importation and sale here.

9. If we stamp our goods (sent to your country from England) "Patent," after our letters-patent have run out, are we liable to have legal proceedings instituted against us?

A. Whoever in this country marks an unpatented article with the word "patent" with intent to deceive the public by the claim that it has been patented, is liable to a penalty. But no action would lie for the use of the word in the case specified.

PAYMENTS.

1. A customer of ours in North Carolina sent us a statement of account with a check to balance such statement, and wrote on the face of the check "In full of account to date," and we used the check. Afterwards a clerical error of about $25 was found in his statement. Can we collect?

A. Our correspondents are entitled to collect the amount still due upon this claim precisely as if they had not cashed the check already sent.

2. Many western mortgages are by their terms payable on a fixed date at a designated office in the West. If not paid at maturity, does that office remain the stipulated place for subsequent payment?

A. A place of payment named in a deed relates only to the time of payment mentioned in the same document, and at any subsequent time a personal tender becomes necessary.

3. A gives B a draft on C. B presents same to C and gets C's

check for amount and deposits same in bank that day. In the meantime C fails and check is thrown out. Can B recover the amount from A?

A. The collecting agent who presents a draft for payment is not obliged to accept anything but legal-tender money, and if he takes a check and surrenders the bill he does so at his own risk. He can still hold the drawee, but the drawer and indorser are discharged.

PENSIONS.

1. Does a widow applying for pension to-day receive same from the date of her husband's death (six years ago) or from the time her application is granted?

A. Section 4,702 of the Revised Statutes provides that if any person entitled to a pension has died since March 4, 1861, by reason of any wound, injury or disease, which would have entitled him to an invalid pension had he been disabled, his widow shall be entitled to receive the same pension as the husband would have been entitled to had he been totally disabled, to commence from the death of the husband. The Department of the Interior has held, however, that the act of March 3, 1879, has so far modified this provision that unless the application was filed before July 1, 1880, the pension is to commence from the date of the filing.

PLEDGES.

(See also Bailments.)

1. A got a loan from me and gave me as security under a personal bill of sale ten machines valued at about $3,000. He has since moved to parts unknown, and I am doubtful of his meeting his obligation; therefore I wish to dispose of the machines in order to reimburse myself for the loan, labor, material, etc. He has been paying the rent of the floor where the machines are now located up to the present time. Have I a legal right to remove or dispose of these machines as I see fit?

A. The document under which our correspondent holds these machines, or a lien upon them, will show him what

his rights are. He has no greater power of sale by reason of the fact that he does not know the present whereabouts of the borrower. When such a time comes, or such a condition arises, that the mortagee or holder of the bill of sale is entitled to sell the goods, in accordance with the plain provisions of that document, then he may sell them; prior to that time he cannot safely make a sale, nor give a good title if a sale is made.

POWER OF ATTORNEY.

(See also Agents.)

1. How can a power of attorney be revoked?

A. Powers of attorney are given in various ways and for different purposes, and the manner of revocation depends somewhat upon the method and purpose of conferring the power in the first place. In some states a power of attorney to deal with real estate is very commonly recorded, as deeds are, and whenever this has been done the power of attorney is not deemed to be revoked until the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded. In cases in which no public record has been made the power is to be effectually revoked only by giving actual notice of the revocation to all who have had dealings with the agent and have given him credit as agent. Those who have dealt with an agent in the past are entitled to continue their dealings with him upon the theory that his agency is not at an end until they have been notified of the revocation of his power or until some such fact shall have been brought home to them as would be sufficient to put a prudent man upon inquiry.

PRINCIPAL AND AGENT.

(See also Agents and Employer and Employe.)

1. We authorized a man to make fertilizer contracts in Virginia subject to our acceptance at a price named by us. Contracts with sig-

natures of purchasers and that of the salesman arrived and we wrote the latter that they were accepted, but returned them to him for the following reason: "Our system of contracting has been to have two forms, both of which are filled out by salesman, one being signed by him and the other by the purchaser; both are sent to us and upon approval we mail the former countersigned by ourselves to the purchaser." In this case the contract was drawn on one form and we wanted it corrected. Meanwhile the fertilizer was shipped direct to the purchaser, freight collect, we sending them on one of our printed forms notice of shipment. The above were the extent of our direct relations with purchaser. The contracts have never been returned to us by the salesman and we find that he has collected from the purchasers. Have we still a right of action against the purchasers?

A. An agent to sell goods is not an agent to collect the price of them unless he has the goods, or some document representing them, in his possession; or unless he is expressly authorized to collect; or unless agents of his class engaged in the same line usually are authorized to collect and the buyer has no notice of an exception in this particular case. This is the fact with regard to an agent who is expressly authorized to sell goods and to bind his principal by the sale. But in the case under consideration the agent has not even that power; he is authorized merely to solicit orders for submission to his principal, who, in turn, reserves the right to accept or reject orders so secured, as he may see fit. If a buyer of goods pays such an agent he does so at his own peril. If the agent does not pay the money over to his principal the latter still has a valid claim against the buyer unless the latter can show express authority conferred upon this agent to collect, or authority implied from the usual course with regard to such agents.

2. We made a contract with a manufacturer to sell all his production. He is out of town and we wrote him a good many times to send us all the samples, but we could get only a part and the principal ones did not come. As we had to send our travelers on the road and could not wait any longer we were compelled to start them with whatever samples we had. The manufacturer kept on sending us samples from time to time. Our travelers left three weeks too late. Owing to this delay we lost a great many sales, more than $10,000, as a good many firms had purchased of others. We sell these goods on

a commission basis. Can we hold the manufacturer responsible for the loss of sales, that is, charge him with the commission lost?

A. It may be possible to hold the manufacturer for the loss, or for part of the loss, in this case. In order to hold him it will be necessary to show negligence on his part in failing to forward the samples promptly, and also to make it appear highly probable, practically certain in fact, that the traveling men could have sold a certain amount of goods, over and above what they did sell, if the samples had been supplied in due season. There was an implied agreement on the part of the manufacturer that he would not stand in the way of a successful compliance with the contract on the part of the commission merchant.

3. An agent is engaged to sell goods strictly on commission, and he pays all of his own expenses. The goods are sold for future delivery. An order taken by him is accepted by the house, but there is an unexpected and unusual delay in delivering the goods; for this reason the buyer refuses to accept them. The employers of this agent refuse to pay him his commission on that sale. Can the agent collect his commission?

A. If a seller of goods does not make such a delivery as will bind the buyer that is his own fault or misfortune. If he can, and does, make the delivery the contract calls for then he should demand that the purchaser accept the goods and pay for them; if he cannot collect the price of the goods in this case, that, again, is part of the risk of his business. The agent who sold the goods is not at fault in either case. He has done all that he agreed to do and all that his agreement required him to do in order to earn his commission. He is clearly entitled to remuneration in full unless his contract with the principal provides that commissions are to be dependent upon the final consummation of the contract of sale and the payment of the purchase price.

4. If a society treasurer deposits money in a bank, and the bank fails, will the loss fall upon him personally or can he show that the money belonged to the society and so put the loss upon it?

A. An agent who is handling money of his principal

should be very careful always to deposit the money in such manner as to leave no possible doubt of the fact that it is his principal's money, and not his own. The courts always hold that where an agent deposits money in his own name the loss will fall upon him in case the bank fails. The explanation of the rule is that the courts realize the injustice of allowing an agent to determine after a loss whether the money was his own or that held in trust. If the agent does not distinctly determine this matter before a loss occurs the courts will settle it adversely to his interests after the loss. Besides, it is always the most reasonable presumption that a deposit belongs to the depositor. Therefore if an agent wishes to charge his principal with a loss, in case any occurs, he must make it clear, when the deposit is made, that it is the money of his principal and not his own.

5. We have a city customer, who sends to us for goods to be delivered to bearer with a printed order as follows: "Please deliver to bearer goods as follows: ——." The signature to this order is printed on a blank line under the word "Per." The party who had been signing these orders obtained from us goods to the amount of about $50. Our customers now claim that they did not order nor receive these goods, and that the party that got them was a dishonest bookkeeper, and had stolen these blank orders, and obtained our goods on them.

A. The employers of the dishonest bookkeeper are unquestionably liable in this case, provided the goods were of the same kind that had been previously furnished upon similar orders, or were of any kind that the employers might reasonably be supposed to have a use for; and provided, further, that the goods supplied on this repudiated order were of about the same value as those supplied on earlier orders, or were of such a value as the employers of the bookkeeper might reasonably be supposed to order in this way.

6. A draws out a receipt for money received from L for safe keeping. A deposits same in a city bank as mentioned in the receipt. L wants to collect the money from A, but A will not answer or pay any attention to L's letters. Can L collect the money by presenting receipt to the bank where money is deposited?

A. When an agent deposits to his own account money belonging to his principal, the latter can claim it, unless his doing so will prejudice the rights of some third person who has acted in good faith upon the supposition that the money belonged to the agent. In the case here put, L can recover the money from the bank upon showing that it is that which he gave A to deposit for him, or that it was deposited in lieu of that. The receipt which L holds, if not disputed, will be evidence of that fact.

7. A merchant being prevented by sickness from attending to his business himself, appoints as manager his clerk who has been with him for some time and has considerably contributed to building up the business. After, say four years, the merchant dies, his widow being sole heiress testamentary. Has the manager the right to continue the business for his own account and with his own funds, or can the widow lay claim to the business, including books and records?

A. In the case here put the manager of the business had no greater rights in it after the death of the owner than before. He was in no sense an heir of his employer and gained no property rights by his death. After the death of the principal his personal representative, in this case his widow, succeeded to all his rights in the business, including the good will and possession of the books, records and premises. There are no circumstances in which an agent is entitled to any greater remuneration than his employer has agreed to pay him.

PROTEST.

1. Please explain the meaning of "protest" and how the protesting of a draft affects the parties concerned. On whom should the protest fees fall?

A. Protest was originally made only in connection with a foreign bill of exchange or draft. It proved to be such a cheap and convenient means of proving certain facts, however, that it is now generally allowed by statute, though not made compulsory, in the case of domestic bills. He who draws a bill of exchange and transfers it to another agrees

by the very act of transfer that he will pay it himself if the person upon whom it is drawn refuses to do so; but the person who drew the bill must first be assured that it has been presented to the proper person at the proper time and place in a proper manner, and that upon such a presentation as this the drawee has failed or refused to pay (or sometimes to accept) the bill. The foreign drawer of bill cannot be, and is not, expected to accept the statement of some unofficial person, especially of an interested party, that all the steps have been taken which were necessary in order to throw the liability back upon him. For this reason formal protest is made—that is, the bill is taken by a sworn public officer, generally a notary public, and presented to the drawee. If he refuses to honor the bill, this officer draws up a brief statement setting forth the fact that he himself made presentation at a proper time and place and in a proper manner and that the bill was not honored. This is the protest. All of the statements made in it are accepted everywhere as presumably true, and the drawer of the bill, or an indorser, can be made to pay it unless he is prepared to show by affirmative evidence that the return of the public officer is false in some material respect. The protest fees are to be paid by the person who is compelled to pay the face of the bill. The holder can collect them of the maker or indorser; then if the drawee was not justified in refusing to pay the bill, so that it can be enforced against him, he can be compelled to pay the protest fees also; they never would have accrued if he had done his duty in the first place.

2. A Louisville bank sends for collection a negotiable note to a Richmond bank, and the note is protested. One of the indorsers lives in Richmond (where payable) and the notary knows him and his place of business, but chooses to send all the notices of protest to the Louisville bank. Is the protest good against all the indorsers?

A. A few of the earlier decisions in this country hold that where a bank, as collecting agent, holds indorsed paper of any description, which is dishonored, its duty is to give notice to its own principal and also to the makers of the

paper and all indorsers thereon. But the doctrine of all the later cases is that the collecting bank need notify only its own principal, from whom it immediately received the paper. This is now the settled rule, but it may be varied by special instructions, or by local usage.

3. John Jones owes me $500 for merchandise sold him. He sends me in payment of the same his draft on a mercantile house in New Orleans. I forward draft to a bank in New Orleans for collection. The draft is presented and payment refused, and is returned to me without having been protested. I return same to Jones saying that the draft had been presented and refused. Does the fact of the draft not having been protested release Jones from his debt to me?

A. Jones is not released from the debt by the failure to protest. There was no object in protesting the draft, and the costs would only have increased Jones's debt.

PROXY.

(See also Corporations.)

1. 1. A owns "full paid, non-assessable" bonds in a mining company. Before a special or semi-annual meeting he is notified of such and urged to be present or to execute papers of proxy inclosed and return. If the proxy is executed and the company votes to assess stock a certain percentage, is not A equally involved, having in fact participated in its action?

2. Would A not be held liable on the bond if a mortgage and bond were executed for funds to carry on the venture?

A. 1. If A issues a proxy authorizing B to cast certain votes or to take certain action for him and in his stead, and B acts accordingly, then A is bound precisely as if he had cast the same vote or taken the same action in his own person.

2. The extent to which A is, or can be, bound by the act of B in a case of this kind depends upon the terms of the proxy, upon the kind and degree of power which B is thereby authorized to exercise in A's behalf. If the proxy simply authorized a vote to issue bonds this fact would not render A personally liable upon the bond.

2. A has been elected an officer of a corporation having only three or four actual shareholders—but as he is not needed in management

he intends to live in Europe a year or two (the other members consenting) and wishes the writer to represent him at meetings and vote for him. Can the writer with or without a share of stock in the company act as the attorney?

A. A director or other officer of a corporation cannot, as such director or officer, vote by proxy in any case. The stockholders who chose him did so in reliance upon his own personal judgment in managing corporate affairs, and it would not be fair to them to allow another person to act in his stead. A person may now be a director in a corporation in some States, however, without being a stockholder. If it is thought desirable to have one or more directors who are not stockholders it is only necessary to introduce such a provision into the certificate of incorporation, or, failing that, to make it part of a by-law adopted at a stockholders' meeting. At a meeting of stockholders any of them may cast by proxy any vote that he would be entitled to cast if present in person. The proxy must be executed in writing by the member himself or his duly authorized attorney.

PUBLIC IMPROVEMENTS.

1. Please inform us if in opening the street for repairs, or laying a new sewer, the contractor has a right to block the front of our place?

A. A contractor who has undertaken to repair streets or sewers is not at liberty to interfere any more than is absolutely necessary with the transaction of business along the street.

PURCHASER AND SELLER.

(SEE ALSO SALES.)

1. A few days since a customer of ours purchased a quantity of a certain article of us of domestic make. By mistake our porter delivered to him the imported article. As there was considerable difference in the price, we immediately wrote the party about the error and requested him to return the same. The same day he came to our store again and said he had disposed of about two-thirds of the goods at the domestic price. Have we any redress by law to collect the difference in price of the domestic and imported article?

A. The buyer can be compelled to rectify the error of the seller as far as he can do it without suffering any personal loss. He cannot be required to pay any higher price for the goods already sold, but he can be compelled to return the goods on hand at the date of the notice or to pay the extra cost of that quantity.

2. If any merchandise left on dock should be destroyed by fire, either partially or wholly, but previous to fire, delivery order and bill had been given to the buyers, must the loss incurred be borne by the importer or buyers?

A. If the buyer had accepted the order as a constructive delivery, the goods are at his risk, and if injured or destroyed, he must bear the loss.

3. A and B go to the store of C to purchase a lot of furniture, etc.; C not knowing B and not thinking his credit good enough, charges the goods and renders the bill to A, sending the goods to B as ordered to do by A, B paying A the amount of the bill on its becoming due. C not being able to collect from A, now demands payment from B, threatening suit. Can C recover from B?

A. Unless it can be shown that C distinctly agreed to release B, and look solely to A, he may hold B. B's payment to A gives him a valid claim against A for money had and received, but does not discharge his liability to C.

4. In a recent issue, under the heading, "A Loss or Expense in Connection With Uninsured Goods Falls Upon the Owner," you state very clearly the position but do not define the rights of the parties in case the goods are destroyed by fire. In the case cited the goods were bought f. o. b. Pacific point and were examined on arrival at the Eastern destination and acceptance declined and arbitration asked for in accordance with the terms of the contract. You made it clear that any expense or loss would fall on the owner, and that the arbitration would determine who was the owner by deciding whether or not the rejection was justified; but if in the interim and before evidence to arrive at this decision had been taken the goods were destroyed by fire, the evidence as to whether the delivery was a proper one and consequently as to ownership would be destroyed and I ask: Did the obligation rest with the buyer to protect the goods? (without regard to the question at whose ultimate cost).

A. In a case of this kind both the buyer and the seller

have an insurable interest in the goods, and either may take out a policy upon them. If they are destroyed before the sufficiency of the tender is determined that will, of course, make it more difficult to say whether the delivery was or was not such as the seller was bound to make. But the principle remains as it was before; each side is still at liberty to put in such evidence as it has, and the decision must go with the weight of evidence as actually presented. The buyer is not under any obligation to protect the goods by insurance, while the questions in dispute are being decided, unless he chooses to do so.

5. A buys of B, who acts as agent for a European firm, several shipments of merchandise at c. i. f. price, payable on arrival of the vessel, on presentation of the papers (bill of lading, invoice, etc.), before the goods had been landed. On inspection and delivery of one of such shipments A finds the goods to be in an unmerchantable condition. Experts testify that this condition was caused by negligence of the European manufacturer's packer. Part of the goods were delivered to A's customers under large reductions, another part was refused by such customers and stored under heavy expenses. B refuses to listen to any claim for damages, saying that he acted only as agent, and A intends to sue the European firm for restitution of such damages.

A. The second contract between A and B stands upon the same footing it would have stood upon if there had been no other contract between them. A person cannot avoid his obligation under a contract by alleging that the other party to it had not complied with the terms of a previous contract between the same parties. A vendor, however, in offering delivery, is always bound to give the buyer an opportunity to examine the goods so that he may satisfy himself whether they are in accordance with the contract. There can be no valid offer of delivery without this. If the buyer has bound himself to pay for the goods upon presentation of the papers and before the goods have landed, he is nevertheless not bound to accept them if they are not in accordance with the contract. He may, on inspection, if he has valid grounds for his action, refuse to accept the goods and demand the return of his money at once. Where, as in this case, a

known factor is buying or selling goods for a principal who is a resident of a foreign country, it is always presumed, in the absence of strong rebutting circumstances, that the factor is being dealt with as principal.

6. Is a buyer justified in demanding a delivery order for goods before he has paid for them, or must he pay the agreed price before or at the time of demanding the delivery order?

A. If a customer buys goods of a firm, and no arrangement is made for giving him credit, the customer cannot demand the goods, nor any documents representing them, unless he is ready, when he makes the demand, to pay the full amount agreed upon in cash. No one can be compelled to part with his goods on credit unless he has expressly agreed to do so, and a sale is always presumed to be a cash transaction unless there is a definite and distinct agreement for credit. In the case our correspondent puts the customer cannot demand a delivery order for the goods without tendering full payment for cash. He would not be entitled to do this in any case unless he could prove an express agreement on the part of the seller to extend credit to him.

7. We took an order in writing from Mr. C for 25,000 of an article to be delivered, 500 the fore part and 500 the latter part of May, June, July, August and until all should be taken. Mr. C accepted the delivery of the shipments until July, when he refused the shipment, writing us a letter, as trade was dull, to please not ship any more goods on account of order until he notified us. We immediately wrote him that we should insist on his living up to the terms of the contract. If we should instruct our truckman to leave these goods on the sidewalk in front of their place of business could we sue, claiming this was a proper delivery and collect for same?

A. When goods are to be delivered in a number of installments, as in this case, the buyer's refusal to accept delivery of any one installment is a breach of the whole contract; the seller may declare the contract at an end, from that moment, and may sue and recover any damage that the breach of contract may have caused him. The seller has a choice of three remedies. He may keep the goods as his own and sue for the damages; he may hold the goods as

agent of the buyer, informing the buyer that they will be delivered to him upon his demand, and sue for the contract price of the goods; or he may sell the goods, for account of the buyer, giving the latter prior notice of the time and place of sale, and then hold the buyer for any deficiency. A delivery of the goods upon the sidewalk in front of the buyer's place of business would be of no advantage to the seller and it might make him liable for that part of the goods if the buyer neglected to take charge of them.

8. A buys a bill of goods with two months dating; the bill is sent on the day of purchase, but the goods are not delivered until two months after. When weighed by A on delivery there is a shortage in weight of twenty-seven pounds. Should this loss fall on the buyer or seller?

A. The answer will depend on facts not stated by the inquirer. If the title to the goods passed on the day of purchase, and they were then weighed out and set apart for the buyer and held for him as in storage, the shrinkage is at his risk. But if the seller simply entered the order on the date of the bill, and agreed to deliver the quantity specified at a subsequent date, he must give full weight on such delivery.

9. Is a storm door placed outside of the vestibule and inside door of a house, included in the sale of such house, or does same remain the property of the seller in the absence of any special agreement?

A. When the question arises between a seller of real property and the purchaser, the courts hold many things to be permanent fixtures which a tenant would be allowed to remove at the end of his term if the question arose between the landlord and him. As between seller and purchaser the rule which finds most favor is that anything is to be considered a permanent fixture and a part of the realty if it has been made specially for the building in question and fitted to it for its more convenient use and improvement. Under this rule window and door screens and storm doors, specially made for the building, have been held to pass by a sale of it.

10. A, the manufacturer, guarantees to B, the buyer, the prices on a certain class of goods for a certain time. Before this time has

expired the prices decline. Is A bound to make the allowance (for price difference) on all the goods delivered to B? Is B only entitled to an allowance on the goods which he has in stock on the day when the price change took place?

A. In the absence of express agreement the interpretation of such a contract as that described by our correspondent is based upon the custom among merchants. Where manufacturers guarantee the price for a specific time the custom is for them to allow a rebate simply on the goods in stock at the time of the decline in price. When such a decline is announced it is the practice of buyers to take account of stock and to present to the manufacturer claims based upon that.

11. We sell a man on sixty-day note terms, he sending us a sixty-day note on receipt of invoices. We hold his notes falling due say November 15, December 1 and December 15 and January 1. The note due November 15 is forwarded to his bank in the regular way for collection. Several days after its maturity it is returned to us by the bank with the information that he had requested them to hold it a few days for his accommodation, but failing to put in an appearance, or rather paying the note, they had returned it to us. Can we sue on all of the notes before their maturity?

A. If, as appears from the statement, the notes were given for separate purchases, the money is not due until their maturity and suit cannot be brought on them all until that date. Each one can be put in suit as it matures and remains unpaid.

PURE FOOD LAW.

1. 1. I am carrying on a grocery business in a Connecticut village, which is situated on the boundary line of Rhode Island. Only a river separates this village from a town in Rhode Island, which contains the postoffice and freight house for the two. I have canned meats on hand which have not the Government inspection label on them. Does the law prevent me from selling these canned goods on the Rhode Island side?

2. How about native dressed hogs, beef and poultry? Are they supposed to be inspected before selling from one side to the other?

3. Can they, under the present circumstances, since all freight

comes into Rhode Island first, prevent us from shipping such native dressed meats to a nearby city in Rhode Island?

A. 1. The meat inspection law provides that "on and after October 1, 1906, no person, firm or corporation shall transport or offer for transportation, and no carrier of interstate or foreign commerce shall transport or receive for transportation from one State or territory * * * to any other State or territory * * * any carcasses or parts thereof, meat or meat food products which have not been inspected, examined and marked as 'inspected and passed' in accordance with the terms of this Act and with the rules and regulations prescribed by the Secretary of Agriculture: Provided, that all meat and meat food products on hand October 1, 1906, at establishments where inspection has not been maintained, * * * shall be examined and labelled under such rules and regulations as the Secretary of Agriculture shall prescribe, and then shall be allowed to be sold in interstate or foreign commerce." The regulations prescribed by the Secretary of Agriculture may be learned by consulting his office.

2. Native dressed hogs and beef, but not poultry, are to be inspected; at least they are to be inspected unless they come within that section of the statute which declares that "the provisions of this Act requiring inspection to be made by the Secretary of Agriculture shall not apply to animals slaughtered by any farmer on the farm and sold and transported as interstate or foreign commerce, nor to retail butchers and retail dealers in meat and meat food products, supplying their customers."

3. That uninspected meat food products were first shipped from Rhode Island into Connecticut is not a reason for allowing them afterwards to be shipped from Connecticut into Rhode Island for sale, if the goods are in such condition that such shipment is forbidden by the terms of the Act.

2. Please advise me if, under the Pure Food law, a retailer is in any way liable for the purity of the goods he sells, provided he buys them on the assurance of the wholesaler that they meet the requirements of the law.

A. A retail dealer is not liable to prosecution under the Pure Food law if he can show a guaranty signed by the wholesaler to the effect that the goods are not adulterated. The wording of that part of the law is as follows: "No dealer shall be prosecuted under the provisions of this Act if he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer." If goods sold under such a guaranty are found to be adulterated or misbranded the person signing the guaranty is liable, not the retail dealer. The guaranty may be in a general form, protecting all retail dealers in a given article, and may be filed with the Secretary of Agriculture; or it may be a special guaranty, in which case it is to be "attached to the bill of sale, invoice, bill of lading, or other schedule giving the names and quantities of the articles sold."

3. Please inform us if we must apply for a license or a number for our goods in order to comply with the Pure Food law and if so, to whom our application is to be made?

A. Our correspondents are manufacturers of food products. As such they need no license under the Pure Food law. Neither do they need a number unless they propose to furnish a guaranty with their goods for the protection of retailers. An important feature of the law is that which provides a penalty for all who sell adulterated or misbranded foods or drugs. It is recognized, however, that the retail dealer may not be in position to know whether the goods he handles are in all respects such as their labels represent them to be. For this reason the law provides that "no dealer shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the United States, from whom he purchases such articles, to the effect

that the same is not adulterated or misbranded within the meaning of this Act, designating it." If the statements in this guaranty are untrue, the person making the guaranty is liable, not the retail dealer. The regulations for the enforcement of the act provide that as means for carrying out the provisions of this section, "a general guaranty may be filed with the Secretary of Agriculture by the manufacturer or dealer and be given a serial number, which number shall appear on each and every package of goods sold under such guaranty, with the words 'guaranteed under the food and drugs act, June 30, 1906.'" This is the only case in which a dealer needs a number.

4. For some years we have been packing goods for parties outside of the State, under their own brands. Some of the goods are pure, some are "compounds." Our name does not appear on any part of the package. So that you will better understand we inclose you sample labels such as we have been using. Will the "premium" label answer all requirements of the "pure food laws" passed June 30, 1906? Do you interpret the law as requiring that our name must appear on the label as the packers? Originally we packed the goods without the additional label describing composition. We take the view that we are complying with the law in using these labels. What think you about it?

A. The labels inclosed by our correspondents are not in accordance with the requirements of the Pure Food law, because they are misleading as to the name of the manufacturer of the article. The manufacturers are our correspondents, W. & Co. The label does not bear their name at all, but does bear the name of one or another of their customers, S. S., W. L., etc. There is no statement that S. S. or W. L. is the manufacturer, but that impression is likely to be made on the mind of a purchaser. One of the labels also bears the name of a place which is not the place of manufacture. It is not stated to be such, but the purchaser may reasonably suppose that it is given as the place of manufacture. The rules drawn up by officers named in the law for the purpose expressly forbid this method of labeling. The label need not bear the name of the manu-

facturer at all; each manufacturer may use his own judgment as to this; but if it does bear a name purporting to be that of the manufacturer it must be the true name; and if it bears a name which a buyer is likely to understand to be that of the manufacturer it must be his true name. The statute itself provides (in section 8) that the term "misbranded" shall apply if the label shall bear any statement "which shall be false or misleading in any particular," and also that an article of food shall be deemed to be misbranded "if it be labeled or branded so as to deceive or mislead the purchaser." The rule made by proper authority for carrying these provisions into effect is as follows: "The name of the manufacturer or producer, or the place where manufactured, * * * need not be given upon the label, but if given, must be the true name and the true place. The words 'packed for————,' 'distributed by————,' or some equivalent phrase shall be added to the label in case the name which appears upon the label is not that of the actual manufacturer or producer, or the name of the place not the actual place of manufacture or production."

5. Does the ruling in connection with the Pure Food law abolish the use entirely of artificial coloring for butter? The dairymen are at a loss what to do?

A. The Pure Food law forbids the use in connection with food of all coloring matters except such as are perfectly harmless. The law also provides that an article of food shall be deemed to be adulterated "if it be mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed." Subject to these requirements any coloring matter may be used.

REAL ESTATE.

(See also Landlord and Tenant.)

1. A sells to B a piece of real estate; in order to bind the bargain B pays to A $40 and A gives B a receipt for same reading: "To apply on house and lot bought." B now wants to back out of the deal and offers A a bonus to do so. Is there any such thing as B being able to back out without A's consent?

A. If a contract for the purchase of real estate is entered into, part of the purchase money paid, and a written document drawn up and signed sufficient to show what the transaction is, there is generally no way in which either party to the contract can legally escape its obligations. He could, of course, escape if he could show that he had been a victim of fraud or deceit, or had acted under compulsion. There appears to have been nothing of that kind here, and the purchaser can be held. All the seller need do is to make out a deed to the property, tender it to the purchaser, and then sue him for the purchase price. The receipt given for the part payment was all the writing the law requires for the purpose if it was in proper form.

2. A and B are executors, with power of sale by will. A has an offer for real estate and consults B, who gives his consent to the sale. A signs and executes a contract, made out between A, B, and C, the purchaser, and accepts a payment, but B hearing that the property was to be used for a purpose damaging some other property he was interested in, refuses to sign either contract or deed. Can B be compelled to consummate the sale?

A. Of course both executors must sign the deed in order to make it valid, in a case of this kind, if both of them have qualified as executors and the will does not provide for a conveyance by the signature of only one. When it can be proved, as it can be in this case, that an executor has consented to a sale, and then has refused to sign a deed drawn strictly in accordance with his consent, suit for specific performance may be successfully prosecuted, that is, the court, upon a proper petition and proof of the facts, will issue an order requiring the executor to sign the deed; his refusal thereafter would be contempt of court.

3. I have bought a piece of property, the rear line of which encroaches several inches on the abutting property, the encroachment being a building which has stood for fifty years. My deed only covers up to the line as it should be and my possession has continued for only six months. Does the rule of adverse possession give me a title to more than my deed calls for?

A. A title to real estate which has been acquired by ad-

verse possession may be transmitted like a title gained in any other way. The language of the law is that adverse possession, in order to ripen into title, must have been held for a sufficient length of time "by the occupant or those under whom he claims." In this case, however, there seems to be no need of joining the possession of different holders, because the adverse possession had continued for fifty years before the conveyance to our correspondent. If that conveyance included the disputed land, or that which may be disputed, the present owner may rely upon the title of the person under whom he holds precisely as that person himself could rely upon it. The deed held by our correspondent does not expressly cover any of the land held by adverse possession, but if it conveys a building standing partly upon that land this fact will probably override the express terms in which the boundaries are described.

4. I bought a house which stands in the middle of a fifty-foot lot. On one side of my lot is a private brick building, which is built up exactly to the dividing line. From what I have been told the leader from the roof of this brick building was originally built into the wall of the house, but as the leader froze in the cold weather and damaged the inside of the brick building the owner a few years ago removed the leader to the outside of the wall without asking permission to do so. The leader as it is now is evidently three inches over my lot. Have I the right to ask for the removal of this leader?

A. The title of an owner of real estate extends to an indefinite distance below and above the surface. It is a trespass to suspend anything above the ground, without his permission, as it would be to place it upon the ground. Our correspondent, in the case he puts, may demand, as a legal right, that the leader extending above or over any part of his premises be removed; if it is not removed he may tear it away himself, doing no unnecessary damage, or he can get an order of court compelling the neighbor to remove it. If it is allowed to remain as it is for the legal number of years (varying in different States) or longer, the owner of the leader may thus gain a right by prescription to have it remain there undisturbed indefinitely.

5. A buys a house on contract, on which he pays a deposit. He subsequently finds that there is some cloud as to the clearness or marketability of the title. As a result the bank from which he expected to make the loan refuses to make the loan, as it does not consider the title a good one. B, the seller, on the other hand contends that the title is good and refuses to return the deposit. Is not A entitled to his payment and damages?

A. The purchaser has no claim against the seller, in this case, on the facts here stated. All that is said in favor of the purchaser's contention is that "the bank from which he expected to make the loan refuses to do so, as it does not consider the title a good one." The seller, on the other hand, maintains that the title is good. This disputed question of fact must be settled first of all, and upon its settlement depend the rights of the parties to this contract. The seller is bound to furnish a clear, marketable title, not open to reasonable doubt. If the purchaser can prove that the title here offered is not marketable, or even if he can prove that the doubt raised by the bank is a reasonable one, he is not bound to complete the purchase; not only that, but he is also entitled to recover the money already paid together with all damages accruing to him as a result of the seller's breach of contract, including any expense to which the buyer may have been put by reason of the negotiations.

6. A sold a large parcel of land laid out in streets to some 400 purchasers. This land was sold under certain building restrictions. On one particular street (one block) nothing may be built but private stables or green houses. So far nothing has been built on this block. The property owners on this street are desirous of finding some way by which they may build private dwellings or apartment houses, such as are permitted on the surrounding streets, without impairing the negotiability of the property. Can the Legislature remedy the matter?

A. Title companies or other careful lenders would probably not loan money and take as collateral a mortgage on any property whereon buildings had been placed in contravention of the restrictions under which the land was purchased. The legislature can remove the restrictions in this

case, and the city acting through the proper body probably has the same power.

7. A has a frame building wrecked by excessive weight of snow on the roof. B, his neighbor, now claims that his (B's) building, also frame, was injured by the fall of A's roof and wishes A to repair it. There is a bulge in B's side wall that evidently was caused by the wreck. The case has been eighteen months unsettled, and B now insists that something be done. Is A responsible for the damage?

A. A is responsible in this case if he was guilty of negligence resulting in the damage to B's property; otherwise he is not liable. A landowner is entitled to place a building on his land and to keep it there. If he is not negligent either in erecting it or in caring for it afterwards he is not liable for any damage that may result to his neighbor as a consequence, direct or remote, of the erection or maintenance of the building. In the case under consideration, if A's building was so negligently put up that it was not strong enough to bear the weight of such snows as may reasonably be expected in that place, then A is liable if it fell down from the weight of such a snow and damaged his neighbor's building. Likewise, if it became evident, after the fall of this particular snow, that A's building was in danger of falling, if A or his agent had notice of this fact, and if there was time to remove the snow between the moment at which he or his agent had such notice and the time at which the building fell, in that case also he is liable.

8. What are the essential rights, as running with the land, of the owner of land (lots) fronting and opening upon a private street, the use of which is necessary to get to the public street for all purposes of traffic and utility? What implied rights are necessarily conveyed by the original owner's deed and what his authority and control over the street as to grade, topography, disfigurement, etc.?

A. The clearest and most valuable right of the lot owner, in such a case as our correspondent puts, is the right of free, safe and unimpeded ingress and egress over the private way. This right clearly runs with the land, and any other right that is necessary to a full enjoyment of it is included in it. When the owner of a large plot lays it off into town lots,

indicates streets and ways upon the plat, and offers the lots for sale, he has, clearly, a definite purpose in view; it must be assumed, and the courts will hold, that the situation and general form and construction of the ways are intended to be irrevocable. The seller intends, and the buyers understand, that the ways will forever remain open, and practically as they are then constructed, for the use of purchasers of the abutting lots. After the sale is completed, or even after it has begun, the proprietor ceases to have an interest in the streets and ways at all comparable to the interest of any of the buyers. The interest of the latter is clearly paramount. The general public may afterwards find it advisable to change the grade of such private ways or to alter their condition in other respects.

9. Some years ago I built a large brick house. I put shutters on the windows, shades all through and screens to the windows. There is a mortgage on the house and lot, and it is about to be sold at foreclosure. I have taken off the shutters and have taken down the shades and screens. The screens simply slide off and on a track. I am informed by the parties in interest, that is, by the building and loan associations, who are the mortgagees, that I have no right to take off and remove these articles, which I claim to be personal goods. Are they right?

A. Whether any article of personal property has been so attached to realty as to become a part of it, and to pass with it, depends in the first place, as the New Jersey courts hold, upon the relation which the parties between whom the controversy arises bear to each other. A tenant may put in many things for his own use and convenience, and remove them at the end of his term, whereas if the owner of the building attached the same things to it, and then sold the building without specially reserving those things, the courts would not allow him to remove them. The rule as between mortgagor and mortgagee is as strict as that between seller and buyer. Where the controversy arises between parties bearing this relation to each other the New Jersey courts have laid down these rules: "In order to establish a claim to chattels as fixtures, a mortgagee of real estate must show:

(1) that the chattels were actually annexed to the realty or something appurtenant thereto; (2) that they were applied to the use or purpose to which that part of the realty with which they were connected was appropriated, and (3) that the person who annexed them intended to make a permanent accession to the freehold."

10. A little more than a year ago I bought a piece of property and hired a lawyer to examine the title and see that the transfer was properly made. Before the time allowed him to pass on it he came and assured me that everything was all right and that there were no charges against the property of any kind, and that I need not bother myself about that, as he guaranteed everything as being all right, and he would be responsible if it was not. I asked him particularly if last year's taxes were paid and he assured me they were, it being the 28th of October and the taxes being payable on October 1. Now when I paid my taxes for this year I found that the taxes for last year were not yet paid, although the lawyer assured me he particularly inquired about that, and they were. What redress have I?

A. The lawyer is liable and suit against him may be prosecuted to judgment. Even if he has no property subject to execution he may not like to have a judgment held over him, and the eposure of such a suit would not, we should think, be a pleasant experience for a lawyer seeking patronage.

11. A owns land on one side of a creek and B on the other. Their deeds in giving boundaries say "thence along the creek to place of beginning." The creek wears away, or cuts across, A's land and adds to B's about the same as is taken from A's. Can A hold the land made on B's side?

A. It is held by the Supreme Court of the United States, as well as by a majority of American tribunals, that when the bed of a stream changes slowly and imperceptibly by a gradual washing away of one bank and building up of the other the line of any land bordering upon the stream changes with it; but if the change occurs by reason of a freshet or other similar cause, and is suddenly produced, the boundary line remains as it was before.

12. A is landlord and owner, and he has granted B a lease of premises for five years with the option of renewing it for five years

more at the end of the first term. If the city should want the premises for an improvement such as a playground or park during B's term, to whom should he look for compensation?

A. When a city takes land by condemnation proceedings it is bound to settle directly with all persons having any interest in the land, and not leave them to settle with each other. It is the duty of the commissioners to ascertain and report the respective values of the different interests concerned. When the land is under lease the commissioners may proceed in either of two ways: They may fix the entire value of the premises and then apportion such value among landlord and tenants, or they may, in the first instance, appraise the value of each separate interest and thus ascertain the entire value. They must, in any event, fix the value of each interest separately. This having been done, the city settles with the landlord and with the tenant separately, and neither of these has any claim upon moneys paid to the other. Of course the tenant pays no rent after the property is taken for public use.

13. S sells property to B, and at the time of selling said property S gives a receipt for $100, which has been paid to him by the purchaser in which he acknowledges receipt of the $100 and also provides for the sale of said property. The purchaser a few days afterward has his lawyer write the seller requesting that he sign a contract of sale. Please inform us whether the seller is compelled to sign said contract, and also whether he is compelled to give a warranty deed. Also is the seller compelled to pay all back assessments when it has not been so stated in the receipt?

A. When an owner of land has entered into a written agreement to sell it to another, and has accepted money to bind the bargain, or as part payment, he cannot be compelled to sign any more formal contract than that he has already signed until the deed itself is ready. He must sign the deed, of course, and it must be a warranty deed unless the agreement expressly calls for some other kind of deed. The land must be conveyed free of all liens except such as were expressly mentioned in the contract. If the contract did not specify any liens subject to which the transfer was to be

made, then the buyer is justified in demanding a perfectly clear title. This places upon the seller the duty of paying off all taxes and assessments which have become a lien upon the land at the time of the agreement; he need not pay any others.

14. 1. A devised an estate in fee simple to B, upon condition that B pay $1,000 to C within one year after A's death. B took possession, but failed to pay C within the year. Can C maintain an action against B either at law or in equity?

2. A, who was indebted to B, mortgaged a lot to him. Later, A conveyed the lot to C, who by covenant assumed the payment of the debt. After foreclosure of the mortgage B recovered a judgment for the deficiency against C; the judgment was returned unsatisfied. May B now maintain an action against A?

3. A mortgage was executed by A, who then owned the mortgaged premises. He then conveyed the premises, and through various mesne conveyances the title vested in B. In none of these conveyances did the grantee assume the mortgage. B conveyed to C by deed, reciting the said mortgage and that the property was taken subject to same with a covenant that as part of the purchase money the grantee, C, assumed the said mortgage and agreed to pay the same.

A. 1. C can maintain an action against B in this case. Acceptance of the devise is acceptance of the condition, and B is personally liable for the debt.

2. If a purchaser of mortgaged land assumes payment of the mortgage debt, in a case of this kind, he is primarily liable for the debt and the seller is his surety. This is the situation as between themselves. If the mortgagee has not made himself a party to this agreement, nor assented to it, he may treat both vendor and vendee as principal debtors and may have a personal decree against either or both.

3. A vendee, in assuming payment of a mortgage, does not become personally liable to the holder of the mortgage unless his vendor is either the mortgagor or is one who has bound himself personally for payment of the mortgage debt. In the case put by our correspondent B was not personally liable, and C is not. C's assumption of the mortgage and agreement to pay it is a mere declaration that he takes the property subject to the lien.

15. I purchased a residence. I find now after recent occupation of these premises that two wires have been strung by one of the various telephone or messenger service companies diagonally across the rear of my lot, about fifteen feet in the air at the lowest point and running upward about three feet at the highest measurement. The wires are not attached in any way to either of my fences or buildings, being suspended from my neighbor's property on either side of me and its course across my garden constitutes a decided objection to me. What is my redress?

A. Telephone companies have no right to use or encumber the land of any individual without having first either gained his consent or procured the condemnation of his property in the usual manner. The State itself cannot take private property except by due process of law. There is a statute which makes it a misdemeanor to cut telegraph or telephone wires wilfully and without lawful excuse, and the companies seem to place reliance upon that in cases of this kind; that statute is not applicable here, however, unless the wires were legally strung in the first place. If the company did not get permission to cross the premises with its wires from the person then entitled to give such permission, and if this use of the land has not been secured by condemnation proceedings, the owner of the property, after giving the company notice and an opportunity to remove the wires, may remove them himself if the company fails to do so.

16. If a tenant nails or fastens fixtures, furniture, pictures, etc., to the walls, floors or any part of the property he may be leasing, do the said fixtures, etc., then become the property of the landlord?

A. One of the tests by which to determine whether a piece of personal property has been so incorporated with real estate as to become part of it, is the manner in which it is affixed. But this is not the only test, nor the best one, and the manner of affixing the chattel must as a rule be more permanent than is indicated merely by the use of nails or screws. The various tests are these: Who affixed the chattel to the realty, what was his relation to the real estate at the time, what was his intention when the act was done, and, finally, in what manner was the chattel affixed to the building or other real property? If the owner of a building

affixes certain things to it which are suitable for use in connection with it these are more likely to be deemed permanent fixtures than the same things would be if put in by a tenant. As to a tenant the usual rule is this: That he may remove anything that he has put in for his own convenience unless there was an agreement with the landlord, express or implied, that it should remain, or there is good reason to suppose that the tenant intended to make it a permanent part of the building when he put it in, or it is so fastened to the building or the soil that it cannot be removed without considerably disfiguring either building or soil.

17. Must a life tenant pay all expenses of keeping up a property which he does not use himself and is not able to rent so as to pay the cost of maintenance? In the question at bar the life tenant has never received any profit at all from the property, but has expended upon it, from his own earnings, a considerable sum which has not come back to him.

A. If a life estate in real property is given to any person he cannot be compelled to accept and retain that gift any more than any other gratuity could be forced upon him against his will. A life tenant is bound to pay taxes and other current expenses, and to keep the property up only if he is desirous of retaining his interest. One of the results of his failure to pay these running expenses may be a forfeiture of his life tenancy; at all events, if he wishes to abandon the interest he has in the land, and escape liability for its maintenance, he may do so.

18. A purchases a house; the deed to be handed over on March 17. Is the new owner entitled to the rent for March, or any part of it?

A. When real estate is sold there should be some definite agreement as to the time from which the purchaser is to become entitled to rents. If there is no such agreement he is entitled to the earnings of the property from the time at which he becomes its owner. If the deed is passed and his title perfected on March 17 such proportion of the rent for March as is to be earned after that date belongs to him.

If the rent has been paid in advance, however, his claim is not good as against the tenant. The tenant has paid to the person who was entitled to receive the whole amount, at the time of payment, and that is all that can be required of him.

19. A piece of real estate is bought upon which there is a mortgage at the time. The deed says that it is executed "subject to a certain mortgage of, say, $5,000." No mention of a bond is made in the deed and the purchaser does not sign a bond. Now if the mortgage is foreclosed, and the land is sold for less than the $5,000 of the mortgage, is the present owner liable for the deficiency?

A. In such a case as our correspondent puts the purchaser of the real estate cannot be held personally liable for the mortgage debt, if there is a deficiency after the sale of the property. A deed which is merely made subject to a mortgage does not render the grantee personally liable for the mortgage debt. To create a liability of this kind there must be such words as will clearly import that the grantee took upon himself an obligation to pay the debt.

20. Under the will of my father, deceased, I am entitled absolutely to one-half share in the residue of his estate on the death of my mother, the life tenant. If I wished to do so, could I raise an advance by mortgaging my share?

A. If the will in this case is so worded that the legacy is to go to the son whether he outlives his mother or not (that is, so that it shall form part of his estate if he dies during the lifetime of his mother), then it has a value which can be ascertained without much difficulty and which may be taken as the basis of a transfer price. The son's estate can be mortgaged or sold without the consent or knowledge of the mother, and without affecting her rights in any way.

21. A man and wife held a piece of real estate as joint tenants. The wife dies intestate leaving children. Does the entire property go to the husband or do the children inherit the mother's interest?

A. A man and his wife never hold property as joint tenants unless the deed or other instrument of conveyance expressly provides that they shall so hold. If they do hold

as joint tenants, and the wife dies without having disposed of her interest by will or deed, the doctrine of survivorship becomes effective and the husband is sole owner of the property.

22. 1. If A agrees to sell B some farm land for a stipulated price to be paid three months hence and B agrees to pay that price upon the expiration of the three months, and then after the agreement is signed by both parties B should request A to deed over to him the property and A should refuse, could B go into court and force A to make the conveyance upon the ground that the consideration had passed and consisted of A's right of action against B?

2. Or, suppose the agreement made as above and suppose A to have deeded the property to B at the time the agreement was made, and then at the expiration of three months B did not pay the price agreed upon and there was no evidence of fraud on B's part, to whom would the property belong?

A. 1. A, if he chooses to do so, may sell his land to B on credit, precisely as he might sell his personal property. If he has entered into a written agreement to sell on credit he holds the land, from that time until the deed is executed, as a trustee for the purchaser. When the deed is made and delivered the purchaser becomes owner of the land, and he is a debtor to the seller for the purchase price. In actual practice the seller usually demands some part of the purchase money when the deed is delivered, and demands also a mortgage upon the land to secure payment of the remainder. If he does not insist upon such a mortgage, and does not in some way evince a willingness to look for security of payment exclusively to some other source than the land itself, the courts of most of the States hold that he has an equitable mortgage upon the land, a lien arising simply out of the nature of the transaction and the lack of other security for payment.

2. If A has deeded his land to B, there being no fraud or misunderstanding in the matter, the land belongs thereafter to B. A may, of course, enforce any note, bond, mortgage or other security he may have taken. If he has taken no security at all he may enforce his equitable mortgage, if it becomes necessary to do so, in those States in

which the existence of this mortgage is recognized. In those few States in which the doctrine of equitable mortgages has been repudiated he is left to his contract precisely as he has made it and as if the subject of sale had been personal property instead of real estate.

23. Is an executor always forbidden to sell real estate during the first three years?

A. An executor, as such, has no power over the real estate of the testator unless such power is expressly given by the will or unless the court authorizes him to mortgage, lease or sell the realty to pay the debts. If any power to deal with the realty is contained in the will, the executor may act in accordance with it; but every sale, conveyance or other act in contravention of the power so given is absolutely void, except as authorized by the court for the best interests of the estate. If the management of the realty is not given to the executor by the will, the real estate passes directly to the heirs or devisees. But in some States there is for three years a statutory lien upon it for the payment of any debts left by the deceased.

24. 1. I have bought a piece of property. How can I find out to whom this property has belonged for the last 200 years?

2. In what form is the title insurance policy made out, is it a separate paper from the deed?

A. 1. By searching the records, following them back from the last transfer, a person interested in any piece of real estate can ascertain the various owners of the property from the time the original grant was made by king or government; a perfect abstract would trace the title back to this original grant, and the buyer ought to be furnished with such an abstract.

2. A policy insuring title to real estate is a separate document from the deed transferring the title. The deed is in the name of the grantor and the policy in the name of the company issuing it; neither of these is a party to the contract of the other. If the transfer is by warranty deed the grantor himself insures the title.

25. A owns a piece of ground lying six feet above grade of street. The owner of adjoining property excavates and erects buildings. If it is afterward found that dampness soaked through the wall of his building, to the detriment perhaps of the health of the occupants, can he in any way hold A responsible?

A. The owner of real estate always holds it subject to the natural situation of the surrounding land. If his houses or lands are damaged by the natural flow of water from an adjoining lot or by dampness arising from it, he must remove these difficulties at his own risk and expense. Possibly the city authorities can, in their discretion, compel property owners to have their lots conform to the grade of the street, but so long as the land is allowed to continue in its original state the owner is not responsible for damages arising from that situation.

26. Suppose a man buys a house for a friend, is he entitled to a commission without any previous mutual understanding?

A. A person who has done a service for another is not entitled to any remuneration, except in accordance with an agreement to that effect, either expressed or implied. If the service was done at the request of the person benefited by it, the law will presume an agreement on his part to pay for it, and the burden is upon him to rebut the presumption by showing that the service was undertaken gratuitously.

27. Please inform me whether a minor can hold real estate in his own name?

A. There are hundreds of thousands of minors in this country who are the owners of real estate. There is no objection whatever to such title. The only difficulty is in the re-conveyance if the minor wishes to sell it, as he cannot execute a deed to give a good title until he attains his majority, and it can only be alienated before that day by order of a proper court.

28. I own a farm near the incorporated village of E., and also near land owned by Mr. D. Between the land owned by Mr. D and the village of E there is a stream of water, which at long intervals becomes very high by heavy rains, and does much damage to the town

of E or to the adjoining lands. On the 17th of September last the rainfall was very heavy and the stream rose rapidly and carried away the dike on the land of Mr. D and cut its way through a fine meadow of mine of about twenty acres, doing much damage. The old head of the stream was filled up very much and the water is still running through the new channel across my meadow. Now have I any redress for damage?

A. If the village officers, through negligence in the construction of a bridge, or in any other manner, have caused the damage of which our correspondent complains, they are liable. But it is each man's duty to protect his own property against accidents arising from natural causes, and if this was such an accident he cannot look to any other person or corporation for redress.

29. I have three parcels of land. I have written repeatedly to the County Clerk and the County Treasurer, giving full description of property, how and when recorded, names of former owners, etc. I have also written to the Tax Collectors but all in vain. I get no proper answer, or none at all. I get no tax bills, although taxes are due. Can you advise me what I can do to protect my interests?

A. The taxing laws of most States require the assessors to complete their assessment roll in each year, and to make out a copy to be left with one of their number. Notice to be given where this copy has been left, and it is there open to inspection. By consulting this roll any one may learn the amount of taxes assessed on his property. The law does not make it the duty of any local officer to send to non-residents information as to the arrears of taxes against their property, but either the collector, or the county treasurer, after the records come into his hands, is usually willing to furnish such information; but by a personal visit to either of these officers the information may always be obtained.

30. A landowner's property runs to another party's land, covered by water, forming a pond or lake by means of a dam; can any company or association putting up a dam, buying the pond land or land covered by water, keep the landowner bordering on same from putting in a boat or boats for his own use or his guests, or to hire, or from cutting ice for his own use or to sell?

A. If A owns land bordering upon land owned by B,

the latter has, of course, no right to go upon A's land. If A covers his land with water, or if it has previously been covered with water, through artificial means—not a natural running stream or standing pond or lake—this fact does not alter the respective rights of the adjoining owners. B still has no right to go upon the water covering A's land, or upon the ice, when it is frozen, nor has he any right to take fish or ice from such pond. In this case adjoining owners formed the pond and acquired a right to fish in it. We are not told how long this right was to continue, but it is, of course, valid in accordance with the provisions of the contract granting it.

31. To settle a dispute please inform me who pays the fee for registering a mortgage on real estate, the lender or the borrower?

A. The mortgagee is bound to pay the fee for recording the mortgage, although sometimes all of the expenses are charged to the borrower.

32. A devised his real property to his four children, as tenants in common, and ordered and ordained that no part of such property be sold without the written consent of the four devisees. Can one of the four, as a grantee of the four, convey without the written consent of the four?

A. If the grantee holds the fee, his signature will convey without the signature of the others, who will be taken to have given their consent to the alienation when they conveyed their interest in the property unconditionally to him. If the grantee holds any less estate than the fee simple (as for instance, if it is a trust) he alone cannot convey.

33. Suppose taxes are confirmed November 15 and are payable in December. If a man should die November 25, leaving personal and real property, and by will disposes of it to different parties, who legally pays the taxes on the real estate, the estate or the recipients of the same?

A. The taxes upon the real property of the deceased, which were assessed and confirmed previous to his death, are payable out of the personal estate. The assessment became a lien on the realty November 15, and therefore the

taxes in the case described are chargeable to the estate, and are to be paid out of the personal assets in the hands of the executors.

34. The lease under which we hire our office says: "The said lessee shall quit and surrender the said premises at the end or sooner determination of said term, in as good condition as the reasonable and proper use thereof will permit; and not make any alterations, additions or improvements in said premises without the written consent of said lessor or his agent; and all alterations, additions or improvements which shall be made upon said premises by either of the parties hereto, except movable office furniture put in at the expense of the lessee, shall be the property of the said lessor." Some partitions were put up carefully, cut out around the cornices and other work of the building and secured in the ordinary manner by nailing or screwing to the floors and woodwork of the walls, care being taken not to injure the same more than could be avoided. At the expiration of our lease our landlord now notifies us that we must not remove or sell the partitions. Have we not a right to do with them as we see fit?

A. But for the stipulation in the lease the partitions might probably be removed without violating the covenant to surrender the premises in good condition. But the agreement to take nothing in the shape of alterations, additions or improvements but movable office furniture, cuts off the tenant, in our judgment, from the right to appropriate any of the partitions.

35. Three adults own real estate. Mother is guardian for one under age. Have some unimproved property which will be sold for taxes within a few days. How can I be secured on a loan to one of the above parties, as this person wishes to save the property by preventing the sale?

A. If the interest in the estate of the one to whom the loan is made is sufficient to cover the advance, a mortgage of his interest would be a good security. If not, all three adults might join in the lien. The surplus above the tax and expenses when property is sold goes to the owners. An appeal to the proper court for leave to sell or mortgage the premises to prevent a sacrifice would doubtless be successful.

36. A house was put in an agent's hands to let; he secured a tenant, but the latter refused to sign a lease or to bind himself for a

year. The agent now claims a commission for one year, and threatens to put his claim in suit. Is he entitled to it, or can he only claim a commission payable monthly as long as the premises are occupied?

A. There is no rule of law or decision under which an agent is at liberty to collect a commission for a greater service than he has rendered. In the absence of special contract the agent is entitled to such reasonable commission as is customary in like cases; and while this might be somewhat greater in the case of a monthly tenant than the proportionate part of the commission upon a year's rental, it is not likely that any court would hold it reasonable to collect a year's commission upon a monthly rental.

37. Please inform me if a person can gain title to a vacant lot after so many years by storing new lumber on it, the person asking the owner's permission and the owner receiving second hand lumber in return.

A. This is an ordinary case of renting or leasing real property for a valuable consideration, and it can never result in conferring title upon the lessee or tenant. If the owner of real estate receives lumber, new or second hand, for the use of his property, it is as truly leased for a consideration as if the rent were paid in money. Every time the tenant pays his rent, in money or property, he acknowledges that the one to whom he makes payment is owner of the real estate; this being true, he cannot, of course, look to the courts to declare that he is himself the owner.

38. A leases a house in New Jersey from B for one year and is given a written memorandum by B to the effect that if A so desires he can, on the expiration of said lease, have renewal of the same for another year. Before the lease expires B sells the property to C and C demands that the house be turned over to him upon the expiration of the lease. Does the privilege of renewal still hold good, or will A be compelled to turn over the property to C upon the expiration of the lease? Neither the lease nor the privilege of renewal was recorded.

A. The reason for recording a lease, or a deed or mortgage, is that the record may serve as notice to all the world of the rights of the parties. The record is constructive no-

tice to one who has not seen it; it is open to the inspection of all, and if any person chooses not to look at it he is held to be bound by it precisely as if he had consulted it. But the record is not the only form of notice which is effective. Actual notice is always binding on anyone who has it even though there has been no record. Notice by possession is also effective. In other words, it is held in New Jersey, as in most of the other States, that possession of real property, if open, notorious, exclusive and unequivocal, will constitute notice to all persons of the rights of the tenant. It is further held that "it is not necessary, in order to prove notice, to show that the person to be affected by the notice knew of the possession of the other. If the possession of the other is of a character to constitute notice, then notice is a legal deduction from the fact of possession." If the lessee, in the case under consideration, was in actual and open occupancy of the building at the time of the sale it was the duty of the purchaser to inquire of him as to the nature of his tenancy and the extent of his right. If the purchaser made no such inquiry he is bound by all the facts that the inquiry would have disclosed if it had been made. In that case the tenant's option for a lease during a second year, though it has not been recorded, is as binding upon the purchaser as it was upon the seller.

39. A carried on business in New York with two others under the names of "E. T. H. & Co." A was generally known outside of his friends as "E. T. H.," whereas his proper name was different. A acquired two lots of real estate, and they were conveyed to him by deed under the name of "E. T. H." He now seeks to dispose of the same real estate and is confronted with the confusion of names—the deed giving the assumed name only. How can this be remedied? It is proposed to convey the two lots from the assumed name to the correct one, and from him to the purchaser.

A. The name of the grantor or grantee in a deed is of importance only as establishing the identity of the person from or to whom the land passes. A mere description is as good as a name if it establishes the identity as well; thus a conveyance to the oldest son of A B, or to all the children of

A B equally, is valid and effective. If land has been conveyed to A under the name of E. T. H., there is no legal objection to the course proposed by our correspondent, that is, to the execution of a deed signed E. T. H., and conveying the land to A, followed by a deed to the purchaser executed by A in his own name.

40. I have owned a piece of property for about nine years. The house was built about twenty-five to thirty years ago, and on one side a fence was built ten feet from the house. Later on a house was built on the adjoining lot, and a year after that I renewed the old fence about ten feet high. Then the neighbor planted some fruit trees about two feet from my fence. Now these trees have grown so big that their branches hang over my fence and shed for six or eight feet. I would like to know now if I have the right to object to the branches growing over my property and if I am entitled to cut them down, or if I am entitled to the fruit which grows on the branches hanging over my property?

A. If trees grow upon the land of A he is sole owner of the trees and of all their branches and fruit. If some of the branches extend out over the land of B this fact does not give B title to the wood contained in such branches, nor to any fruit that may grow upon them; these still belong to A. B has a right to demand, however, that no part of A's property, no part of his house or fence or trees, shall be allowed to occupy space above the land owned by B. B's title is not simply in the surface of the ground, but it includes the space above the ground extending to an indefinite height. For this reason B may demand that A remove any branches of his trees that extend over the land of B. If the demand is not complied with within a reasonable time B himself may cut the branches off exactly at the dividing line. Having done so, he should be careful either to deliver the several branches to A, or else to inform A that they are at his disposal and will be delivered to him whenever he chooses to call for them; the fact should be made clear that B is not attempting to deprive A of his property, but is simply exercising his own unquestionable rights as a real estate owner. Some States hold differently as to gathering of fruits without trespassing.

41. Can a partition suit be brought against property, if a person has a life interest in it, before the death of such party, by heirs to whom it will go after the death of the party who has the life interest?

A. The law provides that where two or more persons hold, as joint tenants or tenants in common, a vested remainder or reversion, any one or more of them may maintain an action for the partition of the real property to which it attaches, according to their respective shares therein, subject to the interests of the person holding the particular estate therein; but no sale of the premises in such action shall be made except by and with the consent in writing, to be acknowledged or proved and certified in like manner as a deed to be recorded, by the person or persons owning or holding such particular estate or estates; and if in such an action it shall happen in any stage thereof that partition or sale cannot be made without great prejudice to the owners, the complaint must be dismissed. Accordingly if the interest of the heirs in question is a vested remainder, a partition suit may be maintained by them.

42. I live in a row of brick houses, lot 100 feet deep, and house (party walls) twenty feet wide. I wish to put an extension on my house (none of the others have one). Must I get the consent of my neighbors, or can I go ahead and do it?

A. The extension can be made wholly on the builder's own ground, but a party wall extension cannot be erected without consent of adjoining owner. If he refuses, and our correspondent is anxious to put up the structure, he has only to bring the wall from the rear of the present house back to his own line, and go on with his improvement.

43. In selling building sites, is the insertion of a restrictive clause in the deed to the effect that the property is purchased with the understanding that the land shall be used only for the erection of private residences costing not less than say $1,500, good in law and valid under any and all circumstances?

A. It has been repeatedly held that a covenant made to secure a uniformity in the structure and position of buildings, and to reserve lots for, and confine their use to first class dwellings, to the exclusion of all trade and business,

is not void, as in restraint of trade or as imposing undue restrictions upon the use of property, and such covenants are enforced.

If, on account of a subsequent change in the character of the neighborhood, a compliance with the covenant would be burdensome to the grantee, and of no advantage to the grantor or his representatives, the courts will sometimes refuse to enforce the covenant, but only for cogent reasons.

44. A person buys four lots which appear on a plan as facing on to a certain avenue, said plan being filed and deed made out accordingly. Can he then alter said lots, facing them on to another avenue, and running them parallel with the avenue on which they originally faced?

A. There is no legal "facing" of a lot. A person owns a plot of ground 100 feet square on the corner of Smith and Jones Street. On the city map they are numbered, we will say, four lots of each 25 feet front and 100 feet deep on Smith Street, the side of one lot running 100 feet on Jones Street. There is nothing to prevent the owner from building four houses on this property, 25 feet wide (or as many more as he chooses if they are narrower) all fronting on Jones Street, the side of the corner house running on Smith Street.

45. I bought some property and was given a warranty deed for the same. The street on which this property is located had been paved some six years before, but the assessment for it had not been confirmed. Please inform the writer whether he has any redress against previous owner?

A. The assessment is not a lien on the property until it is confirmed, and the payment thereof belongs legally to the one who owns it at the date of such confirmation. It is a very common device with real estate operators to buy a plot of land, not yet improved, lay out streets and pave them, flag the sidewalks, put up lamps, construct the sewers, and do everything to make the situation desirable, sometimes covering the whole with dwellings, and then make sale of the same without having paid one cent for all these changes except possibly for the maps and preliminary sur-

veys. In each case the work in some corner of the district is left unfinished and the assessment for it cannot be confirmed, and of course is not a matter of record until it is reported complete. In this way they realize all the advanced price that comes from streets well paved, and lighted and sewered, and leave the purchasers to foot the bill.

46. A owns a block of land in an incorporated city. The upper portion is at grade of street; lower portion some twenty feet above grade of street. A sells lots to B, C, D and E, who dig down to grade of street and build. Please inform me who must bear the expense of boundary wall to maintain A's line?

A. The tendency of judicial opinion in regard to excavations is in favor of the following principles: Generally a man may not remove the natural support given by his own land to that of his neighbor; but a different doctrine prevails in towns and cities, which allows the owner to dig in his own land for the purpose of improvement, without being liable for any damage suffered by the owner of the adjoining land. The excavation must, of course, be carried on carefully—so as not to cause any unnecessary injury. The cities in certain States are governed by a special law in this regard.

47. On the line between my village lot and a neighbor's are four large willows, some fifty feet high, which cause me a great deal of annoyance in loss of garden stuff, small fruits, etc. I cannot persuade my neighbor to allow me to cut them because, as he alleges, he wants them for the shade. What are my rights in the matter?

A. Trees whose trunks stand wholly within the boundaries of a man's land belong to him, but the adjoining owner may, having notified the man, cut off such branches or roots as extend over or upon his land. A tree which stands upon the dividing line so that portions of the trunk are on each side, was the property in common of the landowners, neither of whom was at liberty to cut down the tree without the consent of the other, nor to cut away the part extending into his own land if such cutting would injure the common property in the tree.

48. The seller of property has been paid in full, and of course I will get the release or satisfaction piece. Now, is the seller obliged by law to give up to me any former deeds or releases or other kind of receipted bills affecting this property?

A. The seller of the property is only obliged to give his own deed; and the mortgagee when a mortgage is cancelled is compelled only to give a satisfaction piece to cancel the mortgage. They are not required to give up any former deeds or releases that may be in their possession.

49. Is it requisite to purchase right of way for a tunnel from owners of property located perhaps thousands of feet above the bore?

A. The owner of the fee of real estate owns, theoretically, to the centre of the earth, and a right of way for a tunnel through his property must be had from him. There is an exception to this rule in many States in favor of tunnels run for the purpose of extracting coal or ore. In those States the rights to minerals under the land is excepted from the rights conferred by the fee, either in the original grant or by some other legal process.

50. A purchases land from B; has deeds and title examined by attorney and properly recorded, and then erects a house and other improvements on it. A subsequently finds that although there was no fraud on the part of B, the land belongs to C. Has A any ownership in the house and improvements, he being innocent?

A. Whether there was fraud on the part of B or not, the house belongs to the owner of the land, and cannot be removed without that owner's consent. The other improvements come under the same rule if they are fixtures, otherwise not. Whether they are fixtures or not we cannot tell without knowing their nature.

51. My house is west of an avenue about 100 feet. The land descends from the avenue and my lot is lower than the avenue grade. Parties building on the avenue are piling the dirt taken from the cellars on the lots, so that the lots their whole length are made level with the avenue grade and three feet high against my fence, which will soon be thrown over by the pressure. What remedy have I?

A. A land owner has no right to lateral support from the fence of the adjacent owner. Such damage as he may

do to the fence by piling earth against it he is liable for. This is a case in which the courts might restrain by an injunction, but perhaps the better plan would be simply to make a claim for the damage sustained.

52. A put up a house constructed in the best manner and of the best material with twelve-inch independent side walls. B purchases an adjoining lot and puts up alongside of A's twelve-inch wall, an eight-inch wall forty-four feet high from the curb, which is in contravention of corporation ordinance. B would not have been allowed to put up his eight-inch wall by the Building Department if it had not been for the support furnished by A's twelve-inch wall. Can A recover from B the half cost of his wall?

A. In the absence of any agreement, either expressed or implied, the fact that B has built, entirely upon his own lot, a wall not so thick as that demanded by a city ordinance would give A no valid claim against him. A party wall had been erected, half upon the lot of the builder and half upon that of an adjoining owner, and an agreement had been entered into that if the adjoining owner should thereafter "make use of the same in the erection of any new building," he should pay one-half the value thereof at the time of using it. The promisor subsequently erected a wall entirely upon his own premises, which, by reason of the party wall being out of plumb, came in contact with it only in places, but was at no point more than three inches distant. The new wall as erected was not of sufficient thickness to meet the approval of the building department, if it had stood alone. It was held that as it appeared from the evidence that the new wall received lateral support at the various places where the two structures came in contact, which contributed materially to its strength, stability and safety, the person erecting it had made use of the party wall within the meaning of the agreement, and was liable to pay in accordance with this contract.

53. We lease government property from the city and pay ground rent for said property, and still the assessor taxes the improvement (that of a building) that we have placed on this leased ground and it is now expected that we should pay tax besides paying ground rent. We would like to know: Has the city a right to tax improvements on property that it has leased to a tenant as stated above?

A. Unless the city covenanted in the lease not to tax the improvements placed upon the leased lands, the courts hold that it is competent for the city to levy such a tax and to sell the improvements if it is not paid. The court decided that under the definition of land and real estate relating to assessment and taxation, one person may be taxed as the owner of the fee and another for structures thereon.

54. A buys a house from B, pays $100, and agrees to pay balance of $400 the following day at 3 P. M., but A does not get at appointed place until 5 P. M. to pay the $400, being the balance due to close the contract; can B decline to fulfill contract for sale of property and is the $100 forfeited?

A. Whether B may legally decline to deliver the property to A in this case, and whether the $100 is forfeited by A depend upon the exact wording of the contract, which is not set forth by our correspondent. It is not uncommon for one person to pay money to another for the right to purchase property, if he sees fit to make the purchase, at any time before a given hour. If that was the contract in this case, then A has received the value of his payment when B has held the property at his disposal until the hour agreed upon, and he cannot justly claim anything more. If A had agreed to purchase the property, and B had agreed to sell it to him, and had taken the $100 as part of the purchase money, A's failure to be on hand with the remainder of the money at the appointed hour would not, under any ordinary form of contract, forfeit his right to have the conveyance made to him.

55. Please state whether an owner of a house can be held liable where a tenant of his is caught making imitation bitters on the premises, the owner knowing nothing of it before.

A. In the absence of such knowledge on the part of the landlord as would amount to collusion, he is not to be held liable for the torts of his tenants.

56. A and B occupy a house, renting same from an agent. B claims that A, as tenant of the second floor, has no right in the yard of the premises, while A claims to have an equal right with B. Which is correct?

A. It is well settled that where all the tenants of a building lease from a common landlord with no stipulation applicable to the question at issue, they are entitled to an equal enjoyment of the yard attached to the premises.

57. 1. If I buy real estate and take a contract for a deed, said contract stipulating that a deed is to be issued to me upon the fulfillment of certain stipulations on my part in the future, is such a contract a lien upon the title or property in all States, whether said contract be recorded or not?

2. Would such contract be a matter of record in any State office of record?

A. 1. From the time of entrance into a valid contract for the conveyance of land, the estate rests, in equity, in the vendee, and the vendor retains the legal title, as a lien for the unpaid purchase money. The vendor holds the land upon trust to convey it to the vendee upon the terms and conditions of the contract of sale; meanwhile the purchaser is a trustee of the purchase money for the vendor.

2. Such a contract when properly acknowledged, may be recorded in most of the States, probably in all, certainly in New York and Florida. It is not a lien against an innocent purchaser or a creditor unless it is recorded.

58. My house is on the line of my property. The foundation wall is seven feet deep and forty-five feet long; then comes the rear wall; on this wall the foundation is two and a half feet deep, the wall about twenty feet long. My neighbor starts to build on the line and goes down nine feet deep and 100 feet long. Must I protect my building, or must my neighbor protect it and be responsible for damages?

A. The common law rule is that where one intends to make an excavation upon his land for reasonable improvements, very near the house of the adjoining owner, he must give the latter due notice and allow him reasonable facilities for protecting his property, and after doing so he is liable only for such damage as results from his negligence. The cities in certain States, however, are governed by special laws in regard to it.

59. A sells a house and lot to B and signed a contract to deliver at the end of thirty days a deed free and clear of all incumbrances.

When parties met to close matters at the end of the thirty days at office of B's lawyer, A was informed that there was a mortgage of $2,000, of about seventeen years' standing, not satisfied of record, which had been given by A's father. Whereupon it was arranged that B would take the deed, while A should deposit $5,000 in a trust company until the mortgage was arranged, the money only to be drawn from the trust company with consent of B and his lawyer. Both parties were satisfied the mortgage had been paid, but omitted to be discharged of record; all parties to the mortgage being dead. A contends that to exact of him the actual discharge of record of the mortgage is a hardship that is unnecessary in presence of the release of the mortgage, and would be putting him to quite an additional expense to force the appointment of an administrator. Should he do it?

A. There is nothing more vexatious than a cloud, however slight, upon the title to valuable real estate. It would have cost but little more to take out letters of administration and satisfy the mortgage than to draw and record the release. If the buyer is satisfied with the latter it is all right, but if he is not a small charge will cover the entire cost of the administration necessary to remove the cloud.

60. I am about building and have purchased the right of my neighbor's wall as party-wall, with the stipulation that the beams are to be inserted four inches into his wall. I find that my building is five feet higher than his; can I use his wall on top to the extent of four inches to build my additional height?

A. The weight of decision is in favor of allowing each of the owners of a party-wall to increase the height of his portion of it, where this can be done without injury to the wall as a whole or to the adjoining building. But he makes the addition at his peril; he must insure the safety of the work, and if any injury result he is liable for damages.

61. A buys 200 acres of land for which he pays $1,000, leaving a balance of $500 unpaid. B first gets a judgment lien against A for $200. C next gets a deed of trust from A on the $1,000 paid and land to secure $200. Next comes D. A owes D several hundred dollars, and to secure it he pays the balance of $500 due by A on the land and takes a deed from A on the land, including both in consideration of the purchase; D gets back $400 for timber sold standing on the land, leaving $100 still due on the first purchase of the land, but A is still indebted to D several hundred dollars.

A. It is probable in the case here put that A gave a mortgage upon the land to secure the $500 unpaid purchase money. In that case D, when he bought the land of A and paid the remainder of the original purchase money, might continue to hold the mortgage separate from his title to the fee, and this lien would remain, as it had been from the first, a claim against the land prior to the claims of B and C. D should have accounted upon the mortgage for the $400 realized from the sale of timber. The remaining $100 should have been the first payment made from the $625 for which the land was sold, and the remainder of that amount should then have been devoted to settling the claims of B and C.

62. I have recently obtained three lots of land from a land improvement company, the title of same to pass to me after the completion of a certain number of monthly payments. At some time during my absence, without my knowledge or consent and contrary to verbal agreement, this company caused the removal of a large quantity of soil from this and the adjoining lots, reducing the level some fifteen feet. What remedy have I for damage done?

A. A vendee of real estate who is not yet in possession has such an interest in the property as will give him a standing in court to protest and to protect himself against waste; it is held that one who has merely an equitable contingent interest in the land is entitled to an injunction to restrain waste. That a vendee not yet in possession has such a right, a proper action having been brought the court may proceed to do complete justice, in that single case, by awarding damages for past waste and issuing an injunction against future waste. If the purchaser was in legal possession at the time of the damage he has an equally available remedy through an action for trespass.

63. A sells his farm to B by contract for $5,000 and B pays $500 down, the balance being payable on October 1. The buildings on the farm have a structural value of $4,000 and are insured for $3,000. A fire occurs destroying all the buildings. Who loses the $1,000? Has B got to follow out his agreement?

A. We are not informed, in this case, whether A had

transferred title to the property before the fire, nor whether, if title had been transferred, A had taken a mortgage or reserved a lien in any form on the property so transferred to secure payment of the remainder of the purchase price, nor whether he had delivered up possession to the purchaser. The principles applicable to the case, in various aspects of it, are these: If A has sold his land, and delivered the deed, his insurance policy is no longer in force unless he has reserved a lien on the land; if he has reserved such a lien he still has an insurable interest to that extent. Though A has contracted to sell the property, if he retains legal title and possession until the consideration is all paid, then he has an insurable interest in the property; even if he has given up possession, but retains the legal title until the conditions of the sale are fulfilled, he still has the same insurable interest.

64. A bought some property and was given a warranty deed, free from all incumbrances, for the same. An assessment for grading and paving the avenue on which the property was located was confirmed four months later. The amount which was assessed on the property purchased was paid one year later. A revision of the assessment was made and an additional sum was levied upon A's property. Has A any redress upon previous owner?

A. The additional levy was not a lien on the land when A purchased and he has no recourse to the seller, but must pay it himself.

RECEIPTS.

1. We undertook some work for a company, they agreeing to pay for same; but no amount being mentioned. When a bill was submitted they wanted a reduction, which we would not agree to. After rendering the bill we find some charges not put in it, they being forgotten when the bill was made out. Can we submit a new bill with additional charges and collect same?

A. When work has been done without any express agreement as to the amount to be charged for it there is always an implied contract for payment at the prevailing rate; what this rate is is a matter to be established by the evidence of those doing the same class of work at the same place and

time, and those having such work done for them. If a bill for the work is made out and presented, and the discovery is made at any time before a receipt in full is given, that certain charges have been omitted, these may be embodied in another bill, which will be as valid as the first. Even a receipt acknowledging payment in full is not absolutely conclusive.

2. If a carrier says that we shall not examine goods consigned to us until after we have signed a receipt saying that they are "in good order," what remedy have we?

A. If a carrier refuse to deliver goods except upon unreasonable conditions this is in legal effect the precise equivalent of an unqualified refusal to deliver them. It is unreasonable to demand that the consignee shall acknowledge receipt of the merchandise "in good condition" before he has had an opportunity to examine it, or after he has examined it and found it not to be in good condition. A carrier who makes such a demand, as a condition of the delivery of the goods, is guilty of conversion; suit may be brought against such a carrier immediately for the full value of the goods.

3. A house from whom we purchased goods made an assignment to their bankers of certain bills and served notice upon us to pay the account to the bankers only, drawing our check to the bankers' order. A payment being made, the bank receipts for same in the name of the party from whom we made the purchase. We returned the receipt and requested that same be signed by the assignees. They claim this is not necessary, they being merely the agents of the sellers.

A. Any receipt issued for cash paid under an arrangement of this kind should be signed by the assignees. A receipt signed by the original creditor will not bind the assignees any more than a receipt signed by any other stranger to the transaction; for the original creditor has made himself a stranger to it by signing away all of his rights under it. If the assignees choose to sign as agents of the original creditor, or with any similar qualification, such a receipt may safely be accepted. It shows that the money was paid over to the assignees.

4. Our company makes a payment to a corporation by voucher, the latter reading, per example: To "Union Banking Co." The voucher is returned receipted, viz.: "Arthur Johnson, cashier." Is such receipt good, or must it read "Union Banking Company, by Arthur Johnson, cashier"?

A. If Arthur Johnson is the cashier of the corporation the signature is sufficient to bind the company.

5. Two months ago we received a month's gas bill, which we duly paid and we have the receipted bill. The company now claims an error in the amount and requests us to pay the difference, about $10. Are we liable for such difference, we having sold the property since?

A. If a man owes a gas bill he is not released from it by selling the house in which the gas was used. He is not necessarily released by holding a receipted bill. The bill is very strong evidence in his favor, however, and the gas company cannot collect more without the clearest possible proof that a mistake has been made in issuing the receipt. The written bill and receipt of any individual or corporation is, and ought to be, very strong evidence against such individual or corporation. It is not absolutely conclusive, however. If it can be shown that a clerical error was made, or that there was an actual mistake of any kind, the creditor will be allowed to correct the mistake and recover the amount still due. This is true, at least, except in a case in which the debtor, relying in good faith upon the accuracy of the receipt, may have placed himself in a position from which he cannot now recede without loss.

6. B argues if he buys a box of cigars for $10 and gets a receipted bill and neglects to pay on receipt of same, A cannot collect even though three witnesses can swear that he did not pay on receipt of same; that his word and a receipted bill will hold against the seller and three witnesses, the same as black and white will hold good against any witnesses.

A. It often happens that a bill is receipted in advance of payment, and the possession of such receipt, even if it is backed by the oath of the debtor, is not such evidence of payment that the plea may not be overthrown by rebutting

testimony. In the case cited B would certainly come off second best, and judgment would be entered against him for the amount due for that box of cigars.

7. We shall be glad to have your opinion as to whether a claim can be made on the transportation company for the loss of goods evidently stolen from the case while in their possession; here are the facts: A few weeks ago we shipped to a prominent clock company in New York city a case of clocks by a freight line. They received it in apparently good order and receipted for it accordingly. On checking off the contents several clocks were missing. The box had evidently been opened, the clocks abstracted and closed up again. The railroad having taken receipt as "in good order," disclaim any responsibility. Have we any redress?

A. If a consignee merely examines the outside covering of packages (the carrier knowing this to be a fact), and then signs a receipt acknowledging that they have been received in good condition, the courts will construe the receipt as meaning that the packages were in good condition so far, and only so far, as he had means and opportunity to observe. Such a receipt issued in such a case does not bind the signer to anything at all as to the condition of the contents. If satisfactory proof can be given, in the case here put, of the fact that the missing goods were abstracted while the carrier had possession and control of the packages, and if it is a fact that the outside covering gave no indication that the packages had been tampered with, then the owner of the goods is entitled to recover and the receipt will not stand in his way.

RECEIVERS.

1. 1. A company dissolved and having no debts has had a receiver appointed in order to give a clear title to real estate. Must the receiver advertise same, and get permission of the court for selling each parcel?

2. What are the powers of a receiver in such a case?

A. 1. A receiver is an officer of the court, and, in order to be in a position to give a clear title to any parcel of real estate, he must have permission of the court to make the

conveyance; the land is to be advertised for sale or not, as the court may direct.

2. The duties of a receiver in such a case as our correspondent puts are declared by statute to be the same as those of receivers appointed in ordinary cases, and the chief of these duties are "to collect and receive the debts, demands and other property of the corporation; to preserve the property, and the proceeds of the debts and demands collected; to sell or otherwise dispose of the property, as directed by the court; to collect, receive and preserve the proceeds thereof; and to maintain any action or special proceeding for either of these purposes."

2. What is the law governing receivers of an association? How long a time do they have to settle the affairs of the company?

A. The statute does not undertake to fix the time within which a receiver must wind up the affairs of a corporation, if he was appointed for that purpose, and make his final accounting. He is an officer of the court and is working under the supervision of the court all the time. His most important duties are to keep safely the property entrusted to his care; to apply to the court in any case of doubt for directions as to the management, control and final distribution of the property, and to comply with all orders of the court regarding any of these matters. He will be allowed to make his final report and receive his discharge whenever, in the opinion of the court appointing him, the object for which the appointment was made has been attained.

RECORDING.

1. I hold a ten years' lease of a certain building. I am told if this property should meantime be sold under foreclosure it would terminate my lease. Please tell me if this is so.

A. If A leases his real estate to B for a term of years, and B performs all his duties under the lease, A cannot deprive B of any of his rights during the term covered by the agreement. What A himself cannot do he cannot empower any other person to do. If he sells the land, or mortgages

it, or in any other manner parts with his whole title or with any part of his interest, the purchaser, mortgagee, or other party to that second contract, can at most succeed only to the rights which the lease leaves to A. The lease in such a case has priority over the mortgage or other conveyance. On the other hand, if A mortgages his real estate to B he cannot afterward execute any lease which will interfere with the rights secured to B by his mortgage. In that case the lessee enters into a contract subject in all respects to prior rights conferred upon the mortgagee. In short, the mortgage takes priority over the lease, or the lease over the mortgage, as the one or the other was the first entered into. That this result may follow, however, it must be supposed that the person interested in the second contract, whether mortgagee or lessee, shall have had notice, actual or constructive, of the existence of the first contract. Constructive notice is given to all the world by having the agreement recorded in the proper office. If a lease is promptly recorded any one who takes a mortgage upon the property thereafter will be conclusively presumed to have had full knowledge of the lease and of the lessee's rights under it, and he will not be allowed to interfere with those rights.

2. Please inform me if it is essentially necessary for a man to record a deed or mortgage within six months after its execution?

A. There is no special limit of time within which a deed or mortgage needs to be recorded in order to be valid. Any conveyance (including both deeds and mortgages) is valid, as between the parties, without being recorded at any time. It is also valid as against any subsequent purchaser or mortgagee who has actual knowledge of the prior deed or mortgage, however he may have become possessed of such knowledge. But in order to be notice "to all the world," as the courts phrase it, that is, to all who have not actual knowledge of the facts, a deed or mortgage must be recorded. It may be recorded at any time, and it will become notice from that time. If a subsequent purchaser or mortgagee seeks to gain priority over the original purchaser or

mortgagee, all that such original purchaser or mortgagee need allege or prove is that at the time when the second deed or mortgage was executed or offered for record, there was upon the records a prior deed or mortgage, showing that the person executing the second conveyance was not in position to give the title this conveyance purported to give.

REFEREE.

1. In a civil action has the plaintiff or defendant a right to demand a jury trial and has the council or court a right without consent of plaintiff or defendant to place the case in the hands of a referee?

A. In a suit where there are complicated accounts or questions requiring long and tedious research, the court frequently orders the transfer of the hearing to a referee without consulting the parties in interest.

REGISTRATION.

(See also Patents and Trademarks.)

1. Please inform me if it is legal to register from place of business as I live in the country most of the year and only live in the city a few of the winter months where I board. I have always registered from the place where I take my dinners, but as I frequently make a change, and as the store is in the ward where I have voted for a number of years, it would be more convenient to register from the store, if I have a right to do so.

A. A voter must be registered in the district where he resides, and his residence and not his place of business must go upon the record. If he sleeps in the store, that is his home and then it may be given as such to the registrars.

RELEASE.

(See also Partnership and Mortgages.)

1. It is argued that the appropriation bill makes final provision for its various items as if each consul, for example, in drawing his salary under it gave a receipt in full. Is this so? Has he not a valid claim upon the Government for all that according to the current

legislation should accrue to him, this being a part of his contract with the Government?

A. Acceptance of part of a claim does not release the liability of the debtor for the remainder, unless the creditor agrees that it shall do so, or unless he receives some other than a money consideration for that part of the claim which is not paid, or unless there is a dispute as to the amount actually due, and the creditor accepts the smaller amount under circumstances from which it may fairly be inferred that he waives all claim to the greater. The Court of Claims is the tribunal to which application should be made in a case like that of our correspondent.

REPLEVIN.

1. If a member of an organization (not incorporated) takes property belonging to said organization and refuses to return same when requested to do so, what action can be taken by said organization to compel him to return the property?

A. If a member of an unincorporated organization takes away property belonging to the society and refuses to return it upon request, any officer of the society may take the property wherever he can find it, provided he can do so without a breach of the peace, and return it; or the society, acting through its proper agents or officers, may go into court and replevin it.

RIGHT OF WAY.

(See also Real Estate.)

1. A owns real estate and his deed conveys to him a right of way to the waters of the bay through the property of B. B's deed confirms this right of way. The question asked is: In what does this right of way consist?

A. Rights of way are of many different kinds, but those commonly contained in grants belong usually to one of the four classes known respectively as foot-ways, foot-ways and horse-ways, foot, horse and carriage-ways or drift-ways, the latter being a way for driving cattle. The clause granting

a right of way may state which of these various rights is to be conveyed, and may also limit the use of the privilege to any particular purpose or in any other way agreed upon. But a mere grant of a right of way, without any limitation or description, is interpreted by the courts to be a grant of a general way for all reasonable purposes for which roads are used.

SALES.

(See also Definitions; Terms; Auction.)

1. On the 12th of June I received an order for a quantity of merchandise from a merchant in Wilmington, Delaware. I shipped the same on the 15th. Shortly afterwards I got notice from a trust company in Wilmington that the merchant had failed on the 14th and that his assets had passed into the hands of the former as receiver on the same day. The receiver asked me to reinvoice the goods to the trust company. This I declined to do unless the receiver pays the amount of the invoice. Can I get back the goods or must they go to swell the assets in the hands of the receiver?

A. When goods are ordered and the order is accepted these facts do not alone give the purchaser title to any portion of the goods belonging to the seller; the purchaser, at this point, has only a right to sue for breach of contract if the goods are not sent to him at the time agreed upon. His title to any part of the goods previously belonging to the seller does not attach until these goods have been selected from the general mass and delivered to the buyer or his agent (the carrier is the agent in this case) and a bill of lading making the goods deliverable to the buyer has been delivered or sent to him. In the present case this delivery to the buyer's agent did not occur until June 15, and the buyer had made an assignment on June 14. It is well settled that an assignment for creditors does not pass to the assignee property to which the assignor takes title only after the assignment is made. The goods shipped by our correspondent, accordingly, were not included in the buyer's assignment.

2. We recently sold a New York firm 500 bales cotton, basis middling, New York weights and grades, to include cost, freight and insurance to New York. The custom of the trade is sight draft with

bill of lading and insurance certificate attached. Purchasers, on account of the sale having been made New York weights and grades, claim the privilege of charging us interest until sufficient time has elapsed to enable the cotton to arrive, be weighed and classed. Is it right?

A. Neither in law nor custom is there any foundation for the claim of interest. The rule is for the agents who purchased the cotton to send the invoice and bill of lading and draw for the face of the account at sight. The buyers here pay the draft on presentation. Afterward, if there is any difference on account of weight or grade, it is settled by draft or check.

3. A broker bought on our account some seed, and presented to us a sales note reading: "Sold to ——, Philadelphia, for account of ..... —— seed. Shipment, Union Line, September-October." Afterward we resold some of these goods for future orders, and on the sales note it reads: "From lot to arrive;" also, "from car to arrive;" and also "ex car on arrival." The parties who sold to us now state they cannot fill the order. Please inform us of our responsibility in this matter to the parties to whom we have resold part of the seed bought.

A. Our correspondents cannot be compelled to deliver goods upon the contracts here described, nor to pay damages for their failure to deliver them. They are released from their obligation by reason of the fact that the goods have not been delivered to them, and that they, in turn, sold the goods not absolutely but conditionally. The condition was that delivery was to be made "from lot to arrive," "from car to arrive" or "ex car on arrival." If the sale by our correspondents had been absolute, and not conditional, they would have been bound whether the person of whom they bought made his deliveries or not. But such phrases as are here quoted have often been before the courts for interpretation, and it has always been held that they import a conditional sale, a mere executory contract of sale.

4. A ordered in person goods of B; A had no rating by the agencies, and his order was declined. A then ordered the goods shipped to C (with satisfactory rating), instructing B to draw, after a certain date at ten days' sight, on C. Goods were shipped to C and

draft drawn on C, with instructions to hold the goods till draft was paid. The draft was returned with note of the bank that "parties refuse to pay draft until goods are received." Subsequently the goods were received by C and immediately B repeated the instructions to hold the goods subject to B's order till draft was paid. Nevertheless C delivered the goods to A without collecting the amount of the draft, C stating that A had no authority to purchase on C's account. Has B a legal claim on C or not?

A. When C received the goods he became a gratuitous bailee of them, and was bound to use ordinary diligence in their care. For him to deliver them to A, contrary to the express instructions of the bailor, was not the use of ordinary care, and he is liable to B for their loss. C was under no obligation to receive the goods, or, having received them, he was at liberty to store them at the risk and expense of B to await B's orders. But having elected to receive them he rendered himself liable for a proper care of them.

5. A merchant sells a bill of goods to a certain house and it is stated in the original bill that it is when due payable to a third party. If the goods were not owned by the merchant but consigned to him, can the owner obtain payment from the buyer to the exclusion of said third party?

A. If one who has the right to sell a lot of goods in his own name, whether as owner or consignee, renders a bill of sale which contains a distinct statement that the buyer is to pay a certain designated assignee of the interest who has advanced money for the same, and this is accepted by the buyer, payment can only be made to such assignee or his order.

6. In July I offered A some goods to arrive half in September and half in October, which A accepted. There was no agreement whatever in writing. Some of the goods were delivered when I heard from other buyers that other lots of the same goods had been spoiled in the course of manufacture. I did not hesitate to warn the manufacturer, and he immediately stopped further shipments of the goods. I was not able to deliver the full quantity for September and shall not be able to deliver the quantity for October in time, and A thereupon buys what he needs in the market, paying the market price and charges to me the difference between my order price—the lowest

price in July—and the market price of to-day. Has he any ground upon which to base a claim for non-delivery?

A. A partial delivery of the goods makes the verbal contract binding according to its terms. But whether the seller is liable for the non-delivery of the remainder depends entirely on the character of the agreement. If it was as described, simply a "sale to arrive," all that the seller is bound for is to deliver the goods in case they come; he does not guaranty that they will arrive. If he promised to deliver so many goods of a certain quality and description, half in September and half in October, he must do it, or pay the damage suffered from his default. But a "sale to arrive" (as we set forth in a long article recently) is an executory contract, and if the sale was simply of so many goods of such a quality and description to arrive in the time mentioned, and they do not come, the seller is under no further liability.

7. A buys from B (through a broker) 200 cases canned goods on May 24 for prompt shipment, the terms being sixty days or less 1½ per cent for cash in ten days. The goods were for export of which B had no knowledge at time of sale. Goods were shipped and billed on May 25 and three days later A writes that he had omitted to mention that Custom House papers were required and requests that they be forwarded as soon as possible, in order to enable him to get the drawback on the tins. (The Custom House allows twenty days after shipment to complete Custom House entry.) B declines to furnish the papers on the ground that it would cause considerable trouble and expense to him, and besides he was not positive as to the marks of the tin used and not willing therefore to make affidavit thereto. A remits check in settlement of the account, deducting the cash discount, the drawback on the tin, and Custom House expenses. B refuses the settlement and returns check demanding that remittance be made for the entire bill less the discount for cash. Now, is A justified in claiming the deductions as well as the cash discounts, after holding the check sixty days at B's disposal and then sending it in again on account when it was accepted?

A. B was under no obligation whatever to furnish the affidavit, etc., for the drawback, or any paper connected therewith, and if the reason assigned is given in good faith, he certainly ought not to make the oath required. The

deduction therefore from the bill is neither legal nor equitable. The cash not having been tendered within the time required, no discount can be claimed on the bill, which must be paid in full.

8. We sell to arrive under a broker's contract, as follows: Five hundred piculs, good merchantable quality, flake tapioca to arrive, shipped from Singapore per Laertes at — per lb., gold, net cash, in five days from average delivery ex ship. To be taken from dock when landed. Quality to be approved before removal. No arrival, no sale. At time of arrival buyers do not want the goods and refuse to take them from dock and claim that the clause "quality to be approved before removal" gives them the right to refuse the goods. We would like your opinion on the matter.

A. To say that a contract of this character may be broken at the pleasure of the buyer, if he does not choose to approve the quality, is perfectly absurd, since it would then not be a contract of sale, but the giving of an option to take a lot of goods at a certain price, and that without any consideration whatever for such a privilege. The contract binds the seller of the goods if they arrive, to tender them to the buyer. It binds the latter to take them when thus tendered, if of good merchantable quality, and it provides that the quality shall be tested before removal, so that if the buyer removes them he shall be held to have accepted the quality.

9. We buy from a New York importer 1,000 barrels merchandise at a certain price ex ship Charleston. On arrival of vessel we instruct agent at Charleston to deliver on order from the importer, and we have been presented with a bill for wharfage amounting to four cents per barrel. Will you please inform us who is liable for this charge?

A. The custom among merchants, which is binding in a case such as that put by our correspondent, is that in case of merchandise to be delivered ex ship, the dockage charges are to be borne by the vessel; but wharfage charges, that is, whatever is legally charged for allowing the goods to be deposited, or to remain upon the wharf, are to be borne by the purchaser.

10. A contracts with B to make iron for him for the market. A sells 200 tons of same, on a rising market, to C. It requires four

weeks to deliver the iron, which is placed within specified limit, but after delivery the market weakens, and seventy-three days after first shipment and forty-three after last, there being nine shipments, C claims all the iron was of poor quality and unfit for the purpose for which it was purchased and will sue for damages. Before making this claim C paid A for the iron and A paid B. A is unable to recover from B and is left between two fires through no fault of his and claims that the iron was as good as previous lots sold C and that it was made from same material and with due care, and that as C allowed a longer time to elapse than he was entitled to, before examining the iron, he has waived his right to a reclamation. Is A right?

A. When a purchaser intends to avail himself of his right to reject the goods offered under the contract, or to make a claim for defective quality, it becomes his duty to act promptly. The buyer has a right to retain the goods during a reasonable time in which to decide whether he will or will not accept them; and whether the time has been unreasonably long or not is a question to be determined by the jury in view of all the circumstances of the particular case. His retention of the goods after an examination of them or a reasonable opportunity to make such examination amounts to a constructive acceptance.

11. Goods were sold on the dock as delivered from the steamer. The order for their delivery to the buyer was mailed to him and received by him the next day, in the first mail, say at 9 A. M., and duly stamped. At a little after 1 o'clock of the same day a fire broke out on the dock and the goods were burned. Who owned the goods at the time of their damage or destruction?

A. In the absence of a contrary agreement the law presumes the place of delivery to be that in which the goods are at the time of sale. A valid delivery of them is often made by transferring the *indicia* of title, such as the bill of lading, or any instrument in the nature of a delivery order addressed to those who have possession of the goods. This is sufficient to transfer the title when it is made and accepted in such a way as to make goods in the custody of another deliverable to the buyer, so that no means are left by which the seller may take possession of them. Generally the true test to determine whether a

contract of sale is executed, or executory, is the intent of the parties.

12. A buyer buys a bill comprising say six items. He is told that one of the items is "to arrive," not yet having been received; the balance of his order is delivered and accepted. Does the acceptance of part of the order bind him to accept the whole?

A. He will be bound by such acceptance to accept the remainder of the order provided it is tendered according to the terms of the contract and is in good condition and of the proper quality. But he will have the right to reject any that does not conform to the required stipulations.

13. A salesman sells a bill of goods; there is no signed contract and no part delivery; the sale is made in the presence of witnesses. I claim that the buyer cannot be held to a verbal contract.

A. A verbal contract of sale for a sum exceeding fifty dollars, where there is no partial delivery or partial payment, cannot be legally enforced, no matter how many witnesses may have been present to prove it.

14. A makes a sale of coffee to B to be shipped from Batavia. About six weeks afterward A learns by mail that the port of delivery and shipment has been wrongly stated in the contract, owing to a misunderstanding of telegram, and immediately advises B of the error, offering to cancel the sale. Can B claim a compensatory allowance for the loss he sustained by non-fulfillment, or has he only, as claimed by A, the option of canceling the purchase?

A. The contract is a sale to arrive of an invoice of coffee to be shipped from Batavia. After the contract was executed it was found that no such shipment was to be made, but instead of it an invoice of coffee was to be shipped from Macassar. It would cost the shippers less to ship from that port, and the buyers in the correspondence claim an allowance for all that would be saved the sellers by such a shipment. No such claim can be enforced. The sale to arrive is an executory contract, and if the coffee described does not arrive no responsibility is incurred by either party.

15. We sold a customer of ours five tons of sumac in warehouse, to be delivered on a certain day. On the day specified we gave his regular drayman an order on the warehouse for the goods. The

drayman received the sumac in good order and condition, but being caught in the rain some bags got wet while being hauled to our buyer's factory. The buyer refuses to pay the bill unless we make an allowance for the damage, which we refuse to do. We claim that the drayman is the buyer's agent. Which is right?

A. If the sellers agree to deliver the sumac to the buyer at his factory, they must do so free of damage, and the fact that they employed the buyer's drayman at his request to transport it, would not relieve them from their liability. But if, under the contract of sale, the handing of an order on the warehouse to the buyer's drayman completes the delivery intended, then the carting is no longer at the seller's risk. It is a question of fact concerning the agreement or understanding between the parties on this point.

16. A certain lot of goods having been sold to arrive at a fixed price, duty paid, and the Treasury Department having, subsequent to sale, but prior to arrival of goods, reduced the rate of duty (by a new classification), who is legally entitled to the amount of duty saved, the buyer or seller?

A. When a seller agrees to deliver a lot of goods, duty paid, the buyer has nothing to do with the rate. If the duty goes up the seller must pay it and lose the difference. If the duty goes down the seller will make so much the greater profit.

17. I bought some goods in sundry lots at public auction and have the bill of sale duly receipted. Part of the lots were duly delivered, but some of the best are still in possession of the seller, who refuses to deliver them to the auctioneer. The auctioneer wants to return the money for the non-delivered lots. Must I submit to this unjust course or is there any law to protect me?

A. For breach of a contract to sell and deliver personal property, whether the sale is by auction or not, the seller is always liable, the measure of damages usually being the difference between the contract price and the market value at the time and place for delivery. The buyer may recover special damages if such have been sustained, but this can only be where there is no regular market for the article at the place where it was to be delivered, and it could not with reasonable diligence be procured there. In such a case

expert testimony is admissible to determine the value of the goods sold.

18. On the 17th of April the bark L. B. entered in this port. On the 18th we bought from Mr. C. 500 cases of wine, arrived by said vessel. To accommodate Mr. C. we agreed to make the entry and to pay the duty and freight ourselves. The value of the invoice was to be paid after forty-five days. The goods came out of the vessel on the 29th of April. Please state if bills must be dated April 18 or April 29.

A. It is usual in most trades to date the bill from the day of purchase and not from the date of delivery, and this is the generally accepted custom in cases like the one described.

19. Who should pay for consular certificate on goods sold in Europe at cost and freight—delivered here—buyer or seller?

A. We understand that it is customary to charge this to the buyer.

20. A merchant buys goods for export. He receives an order to examine and sample the same in store, but not being satisfied with this examination, he requests samples to send abroad as a type of the lots. The goods followed on order, but are refused by the buyer abroad, as a portion is worthless and not equal to samples sent and he returns them. Can the buyer here compel the seller to take the worthless quantity only, or the entire invoice, or has the buyer here no redress, he having paid for the goods?

A. The facts being conceded the foreign purchaser had the right to keep the goods and claim an allowance for the goods that fell below the sample sent, or to return all of the mark that was inferior or "worthless," and receive the price paid for them. If the seller refuses to receive them, and to refund the cost, the agent here, after tendering them, can put them in store and sue for the money.

21. A in St. Louis sells B in New York a ton of "Golden Seal root" at "forty cents cash delivered in New York." A ships the root, sends invoice and bill of lading to B, asking him to remit cash. B claims that he need not pay until the root arrives, is approved of, weighed and delivery taken. Is he right?

A. In the absence of any custom or usage in the trade to the contrary, the term "40 cents cash delivered in New

York" would entitle the buyer to demand delivery of the goods as a condition of payment. We do not find that there is any usage in the trade by which this interpretation may be varied, and we think B is entitled to delivery before remitting.

22. We bought of B one hundred barrels of molasses and received an order on a steamship company for the goods. Our truckman after considerable trouble got ninety-four barrels; the other six barrels were buried under a pile of other barrels and could not be got out. Are we bound to take the six barrels if say a week has elapsed?

A. A has the right to reject the 94 barrels if he cannot get the whole 100. Or if he chooses he may notify the seller that only 94 have been delivered to him on his order, and unless the other six are forthcoming at once, that he will decline to pay for more than he has then received. To make a good delivery the carrier must place the goods where they may be recognized and taken away.

23. A having a ship for sale B makes inquiries of him as to its condition and the price. A names the price, stating that, as to condition, "I will say nothing; examine the property for yourself, and let it be clearly understood that if you purchase you will have to accept the transfer at your own risk as to any and all defects she has or may have." B makes as careful an examination as it is possible to make under the circumstances. The transfer of the ship is made from A to B in due legal form, in accordance with above facts. B subsequently discovers defects (latent defects) in said ship entirely unknown to him at the time of purchase, and without delay gives proper notice of this fact to A, who acknowledges he knew of the same at and before the time of the sale. Can B refuse to carry out the bargain?

A. It is held in England and in Canada, as in many of the States of this Union, that where goods sold are inspected by the buyer, there being no fraud on the part of the seller, the maxim *caveat emptor,* applies, even though there are latent defects not discoverable on examination. An exception has sometimes been made to this rule where the seller was the grower or manufacturer of the goods. But in a case such as that here put it is held not to be a fraud for the seller to refrain from mentioning the latent defects, and if he does not actively mislead the buyer as to their

existence the latter buys at his own peril, unless he exacts a warranty of quality.

24. A man died intestate about a year ago, leaving several children. His property is of little value, and consists of a small piece of real estate, yielding a small income, some apparently valueless patent rights and a small quantity of tools, etc. Nothing has been done in the way of the appointment of an administrator. Would one of the sons incur any liability if he negotiated a sale of and delivered the tools and applied the proceeds to the payment of the funeral expenses?

A. If a deceased person has left anything at all of value to be distributed or disposed of letters of administration should be taken out. Some of the difficulties attending such a course as our correspondent describes are that the person who has disposed of the goods may be called upon to answer for them to the estate afterwards, and also that the purchaser is not in position to defend his title. If an administrator of the estate is ever appointed, or if the public administrator undertakes to handle it, the purchaser of these tools may be compelled to return them to the estate, or the person who undertook to sell them to him may be compelled to pay their actual value.

25. A sells B one hundred bales strict good middling cotton, and offered him 200 bales to choose from. B's sampler selected about fifty bales, declining the balance as not being of quality. A had the remaining 150 bales classed by the Arbitration Committee who found fifty bales of strict good middling in the lot, showing that B's sampler rejected cotton he should have taken. Has A a claim for damages against B?

A. If A sells B 100 bales of cotton of a certain grade B is not bound to choose the 100 bales from a larger quantity tendered by A. Of course he may undertake to make such a selection, if he is willing to do so, and if he does undertake it he is bound by the result. In this case the buyer undertook to select 100 bales from 200 bales tendered to him for that purpose. He set aside and accepted 50 bales, declaring that there were not 50 other bales in the lot meeting the requirements of the contract. If the seller can prove, by such evidence as will convince a jury, that there

were 50 such bales in the 150 remaining he is in position to sue the buyer for breach of contract and to recover any damages such breach may have caused to the seller.

26. If an order is given to a foreign house to ship goods here, and in a week after receipt of order a cablegram is sent cancelling the order, can the sellers obtain by legal process the profits on the cancelled order?

A. A buyer is allowed to cancel his order at any time before it has been accepted by the seller. If the buyer requests that he be notified as to the acceptance of his order, such notification is necessary to constitute a valid contract. But if no such request is made, as seems to have been the fact in the case under consideration, the seller may give notice of his acceptance, which will be binding on both parties if given before the order is rescinded; or he may proceed to execute the order, and such proceeding will be a valid acceptance. In the case under consideration, if the foreign seller incurred any expense or performed any act from which a jury would be justified in finding that he had accepted the order and was proceeding to execute it before the telegram cancelling the order reached him, the contract would be binding on the buyer.

27. A purchases of B two carloads of mill feed. A states that he wants it only for quick delivery (as quick as possible). B states that he has two cars in transit, then due at the eastern junction point. A is located in a New England town and purchases the two cars mentioned of B, B naming a price for them delivered at A's depot in New England, the cars to come forward immediately. One car arrived in about ten days; the other car not arriving after three months or over. A notified B that, considering the circumstances of the sale, he will refuse to accept it or pay for it, and claims that he is justified in refusing. Please advise if A is correct.

A. The purchaser is clearly at liberty to refuse acceptance of the second car in this case. The meaning of prompt or quick delivery necessarily varies with the nature of the goods and other particulars of the transaction. But it is settled in this case that delivery might have been made, at the latest, "in about three weeks" of the time of sale. That being true, a tender made three months or more after

the date of the sale is clearly a tender which the buyer is under no obligation to accept; not only so, but he is entitled to damages for the seller's failure to make a timely tender if any such damages have resulted.

28. We sold a party some goods during the months of October and November, the last bill being dated November 13. They had previously used large quantities of the goods, and those sent during October and November were, as far as we knew, the same as other lots, being imported from the same manufacturer in England. The goods purchased in October had been paid for, when about December 1 they claimed the goods were not as they should be, that the imperfection was of a nature that could not be developed or noticed until the manufacturing was done and so remained unseen until after part of the lot was made up. We are willing to take back all the goods which are in the original condition, but they wish to return all they have, including the ones which have been used in their manufacturing and to charge us with the cost of those and for all work which has been put on them. Which of us is in the right?

A. If the goods to which our correspondent refers were sold under an express warranty of quality, the buyer would be at liberty to use them and rely upon the warranty for any damage which he may have sustained. But where, as seems to have been the case in this instance, goods are sold without an express warranty, the buyer must determine before using the goods whether they will suit his purposes or not, and he cannot claim damages for defects in any goods which he has used beyond such small amount as was necessary to test their quality. Whatever he uses beyond this amount he will be deemed to have accepted.

29. A, who is in the general merchandise business in New York city, trusts B, who is cook on board a steamer, with a bill of goods which he is to pay for on pay day. He is discharged before his month is up and does not pay his bill. At the end of a year he shows up and gets employment on board of another steamer, the captain of which, wishing to see A receive his money, offers (providing he runs no risk), to give B on pay day an order on A requesting A to pay B the amount of the order, which is more than is due A.

A. The captain cannot pay A the money to deduct from it B's wages without the latter's consent. But he can make

it a condition of further employment that B shall consent to such payment, and this may effect the object.

30. We buy at auction several lots of merchandise from catalog, among them several lots in black. The auctioneers fail to deliver the full quantities, saying the owner made a mistake, not having so much in stock. We know the owner sold the goods at private sale within twenty-four hours after the auction sale, and we are not satisfied with the offer of the auction house to credit us on their bill, which calls for and charges full catalog quantities, with the difference in yards undelivered. Among the blacks there is a certain quantity delivered in white, entirely undesirable, and which we do not wish. The auctioneers claim we must return the entire lots, black and white, correct and rejected color, with which we are dissatisfied, because the terms of the sale were: "Goods damaged or disagreeing with samples, the entire lots to be returned, unless an allowance can be mutually agreed upon, and where goods are reported damaged, and buyer and seller disagree, the subject of complaint must be decided by arbitration, decision to be binding on both parties." Cannot we compel the auctioneers to deliver all goods as catalogued and charged in their bill, or pay us the difference between the price at which the goods were bought and the market price thereof?

A. The auctioneers are protected from the enforcement of any such demands by the terms of the sale, which are binding alike on buyer and seller.

31. A client orders the purchase of May cotton and afterwards its sale. Suppose it is purchased of member A and is sold to member B. The client's trades are closed out and settled, but two contracts remain open between the members. Now how does the member instigating those trades close them out except that he goes on the floor and buys in the one and sells out the other? If a member bought of one party and sold to another, supposing that he did not have another trade to offset the closing out of either of the above, there appears to be an element of risk to that member unless, of course, he went on the floor and closed out his first trades, but if he assumes these trades himself, after closing with his client, and awaits a further order from other clients that will offset the first, then the risk arises which I did not understand existed.

A. No transaction in cotton is recorded or recognized by the Exchange except such as are made openly on the floor during trading hours. In such a case as our correspondent puts there would not be a sale on the Exchange, or elsewhere, to complete the transaction. If the broker

cannot "ring it out," as the expression is, or settle it through the clearing house, he himself "stands in the gap" and remains responsible until the end of the month. The risk is not very great, but such as it is it is assumed by the broker.

32. Is it not always the duty of a seller to deliver the goods he sells, and if the buyer lives, say, in Chicago, or in any other distant place, is not a sale to him equivalent to a promise to deliver the goods to him in that place?

A. A seller of goods must, of course, deliver them, that is, he must turn them over to the control of the buyer. But he need not carry the goods to a distant point in order to make this delivery; and unless he is bound by a special stipulation in the contract to deliver the goods at some other place than that which they occupy when the sale is made, he cannot be compelled to do so. When a dealer in New York sells goods to a buyer in Chicago, there being no agreement to deliver them in Chicago, the seller's full duty is done when he has handed the goods over to a carrier properly packed, marked and billed to the Chicago purchaser.

33. I ship from December 29 to March 16, the following year, several lots of goods, put up by a factory in the United States, to a foreign port, having shipped from the same factory several lots of the same style of goods before. But the last six shipments when arriving at the port of destination were rejected by the purchasers on account of the unsound condition of the goods. Three parties took a portion out of bond and paid the duty, but when the goods were taken to their stores they found them mouldy and decayed, and they look to me for the duties paid on the goods. I had to abandon them for the duty. Please say whether I have any claim on the packer or not. I have the appraiser's certificate and consul's certificate stating the unsound condition of the goods and that they were unsound when packed.

A. If our correspondent can prove in this case that the goods were unsound when packed there is no doubt of his right to recover the full amount paid for them. If the goods were sound when packed, if the seller had no knowledge of their having become unsound afterwards and before the time of the sale, and if there was no warranty in the matter, then the loss must fall upon the buyer. All that can reasonably be required of a seller in any case is that his goods be in perfect order at the time of sale.

34. A sells goods to B by correspondence. The correspondence shows that the goods will have to be sent some distance to reach B. In such a case is it not part of A's duty to see that they reach B safely and in good condition? If the carrier damages them, or loses them, is it not A's duty to take the matter up with him, and to send other goods to B, if necessary?

A. When A sells goods to B, and the contract is silent as to the place of delivery, it is assumed that B is to take the goods in the place in which they are at the time of the sale. The seller, in other words, is not bound to move the goods after the sale is made; all he can be asked to do is to point the goods out to the buyer and allow him access to them. Accordingly, when the buyer is in one place and the seller in another, and the goods are to be shipped to the buyer, it is the buyer and not the seller who owns the goods while they are in transit, if the seller has not agreed to deliver them at some place other than that in which they were at the time of the sale. The seller has done his full duty, in such a case, when he has turned the goods over, properly packed and addressed, to a carrier. They are to be delivered to the carrier selected by the buyer, if such a selection has been made; if not, then to any reliable carrier such as a prudent man would select to transport and deliver his own goods. This carrier then becomes an agent of the buyer, not of the seller.

35. "We have to-day booked you for delivery as wanted 2,000 barrels oil—standard 40c. Other grades at ruling difference. Prices guaranteed. We hereby confirm same.

"(Signed) ....."

This was a contract for delivery at any time during one year. The price declined to 27 cents and has now advanced to 30 cents. We have unfilled sales made at 27 cents. Can we insist upon delivery of the balance of our contract at 27 cents?

A. The sale in this case was made in New York and the contract is to be interpreted by the usages of that market. Those who are best acquainted with the trade there tell us that their understanding of the term "prices guaranteed" is that the buyer is entitled to have as large a part of his order as he may choose to call for at any time at any price (not above 40 cents) which may chance to prevail when

his order is given; but if a lower price has been reached before the order is given than that which prevails at the time of the order, it is this latter price, and not the lower one previously in force, which applies to that order.

36. B, who is a dealer in hops, makes a written contract to deliver at a future date a certain number of bales of hops to a brewer, C. C, before the said hops are delivered, assigns or sells the hop contract to another dealer, D. B refuses to deliver the hops to D, stating as his reason for refusing that the contract was not made with D. Is not the position that B has taken wrong?

A. If B has agreed to deliver hops to C he cannot be compelled to deliver them at any other place or time than the contract calls for; neither can he be compelled to look for payment to any other person than C. The contract is assignable, however, and if the seller is asked simply to deliver the goods to another person than that one named in the contract, all other obligations remaining as they were in the beginning, he is bound to make such delivery. All the seller has a right to insist upon is that he be paid, or payment secured, as the contract provides, and that he be required to deliver simply at the place and time agreed upon.

37. A sells B a car of flour at a delivered price, presumably reserving the right of routing. B orders out the flour via the C. Railroad. Later on A ships the flour without stating whether he has followed B's routing instructions or not. The bill of lading fails to show any routing. The flour is delivered via the B. Railroad after a terrible delay and B is damaged thereby. Is not A liable to B on the ground that silence gives consent, and that he should have notified B that his instructions would not be followed?

A. In such a case as our correspondent describes the seller undertakes to deliver the goods at the end of the route. If the buyer names the route over which the goods must come, making his designation before the contract is entered into, the seller must accept that choice and ship accordingly or he must decline to enter into the contract at all. On the other hand, if the order is given and accepted, so that the contract becomes complete, before the buyer notifies the seller of his choice of a carrier, then the seller is not bound to pay any attention to such notification

when it does reach him. He has undertaken to make the delivery at his own risk and expense, and he may choose his instruments.

38. A buys a certain lot of goods from B at a delivered price; the railroad company serves notice that the goods have arrived and to prevent storage charge A hauls them to his warehouse; upon investigation it is found that the goods are not up to sample. Has A accepted the goods by taking them into his possession?

A. To receive goods is not necessarily to accept them. A buyer is always entitled to inspect the goods before accepting them, and to this end he must take them more or less completely into his own possession. He may carry them off to his own place of business for the purpose, without being bound to an acceptance of them, provided he makes it plain that such inspection as he may have made before taking them from the carrier is not sufficient, and that he intends to make a more thorough inspection afterwards and to base his acceptance or rejection of the goods upon that; in short, there may be an implied acceptance of goods which will become as binding as an actual acceptance, and a buyer who takes them into his possession should guard against this by making his position clearly understood at the time he does so.

39. If a buyer pays freight upon the goods, so that the carrier is his agent, and if a bill of lading has been issued and sent to the buyer making the goods deliverable to him, would either of these facts, or both of them, prevent the seller from stopping the goods in transit if the buyer should become insolvent?

A. As the rule is commonly stated, a seller's right to stop the goods in transit comes to an end as soon as the goods have been delivered to the buyer or his agent. To be entirely accurate the statement of the latter part of the rule should be, "or to an agent authorized to accept the goods in the buyer's behalf." A carrier is not an agent of this kind; he is authorized to receive the goods and to transport them to the buyer, as the buyer's agent; but if the carrier were to inspect the goods and declare that they were satisfactory under the contract this would not bind the buyer. In short,

it is well settled that the carrier, inasmuch as he is not an agent to accept the goods in the buyer's behalf, and so bind the buyer, is not such an agent that delivery to him will defeat the right of stoppage in transitu. Neither will the issuance of a bill of lading making the goods deliverable to the buyer necessarily defeat this right.

40. If A buys goods of B to be delivered three or four months after the date of the purchase, can A then turn the contract over to C and escape all liability under it himself; that is, can he order B to deliver the goods to C and to look to C for payment?

A. If A buys goods of B for future delivery he can require B at the proper time to deliver them to C or to any other person selected by the buyer. So long as the time, place and other conditions of delivery remain the same, the seller has no right to complain of the person selected by the buyer to accept the goods. The buyer can not by this device escape any liability under the contract, however, unless the seller is willing to release him. The seller having delivered the goods in accordance with the contract, and to the person nominated by the buyer to receive them, he has a right to look to the buyer to fulfill his duty under the contract, which consists in paying for the goods.

41. We received by mail from abroad a sample of nutmegs, and immediately cabled our order for 105 cases at the price quoted, receiving in reply acceptance of same. The goods have now arrived here and are nothing like the sample submitted and purchased on. Previous to arrival of the above-mentioned goods a draft with documents attached was presented for acceptance which we accepted, though we did not pay it, not being due until ten days after date of acceptance. The shippers cable they will make allowance, but we cannot use the goods at any price, as the quality is too inferior. Can we be compelled to take the goods and pay the draft which we accepted?

A. Our correspondents clearly cannot be compelled to accept the goods as satisfactory in this case. The sellers themselves have practically acknowledged that the goods are not such as the contract called for; but without regard to this fact the buyers are justified in rejecting the goods

on satisfactory proof of any kind that the tender is not equal to the sample. The buyers have a valid claim against the sellers for that amount, if any, by which the market price of such goods as the contract called for exceeded the price named in the agreement on the day when delivery was tendered. If the draft is presented for payment by an agent of the sellers the acceptor cannot be compelled to pay it.

42. Several months ago, as selling agents for a Southern mill, we sold 15,000 pieces of cotton fabric and received in due time a confirmation of the order in writing, both from the customer and from the manufacturer. The order sheet read "15,000 pieces, cuts running from forty to forty-two yards each." The manufacturer has shipped out about 14,000 pieces, and claims that in shipping about 630,000 yards he has filled this order and is not compelled to ship further lots. No total yardage was given in the order sent to the mill, but the manufacturer voluntarily made the pieces longer than the limits stated in the order sheet, and now claims that having delivered the total yardage mentioned he has completed the order.

A. A seller who has agreed to deliver 15,000 pieces of goods can be compelled to deliver 15,000 pieces. If the first 14,000 pieces have contained some which were not such as the contract called for, and which the buyer might have rejected but has been willing to overlook and accept it furnishes no ground upon which the seller can successfully resist a demand for delivery of the other 1,000 pieces.

43. It is customary in our line of business to send out goods to intending purchasers "on memorandum" and they are not infrequently left for weeks, under consideration, and without any specific agreement that they are insured against loss by fire, etc. Does a "memorandum bill" on which is printed a fire notice, or other contingencies, and which is delivered with the goods, protect the owner, and does it confer upon him a valid claim against the consignee for the value of the goods destroyed while on his premises?

A. An owner of goods who sells them "on memorandum" or absolutely and unconditionally is always entitled to dictate his own terms of sale. If those terms are brought to the notice of the purchaser before the contract is concluded he is bound either to reject the goods or to take them upon the conditions so imposed by their owner. Ac-

cordingly, a purchaser who accepts the goods is bound by all the conditions and limitations under which the sale and delivery are made, in so far as those conditions and limitations are brought to his notice before an agreement binding upon both parties to the contract has been completed.

44. A places an order with B for a lot of goods that had to be manufactured especially for A. The goods were manufactured by B, but through error went to the wrong destination, of which B informed A promptly, advising him that there would be a few days' delay in the goods reaching him on account of the error. About a week after B had informed A that there would be a few days' delay, and by which time the goods that had been specially made for A were in transit to him, he demands cancellation of the order and return of the money paid in advance for the goods. Is B under any obligations to return A the amount advanced for the goods?

A. A man for whom goods are made on special order is not entitled to refuse them if they are somewhat late in being delivered. It is not like a sale of goods, in which, as a rule, title does not pass until delivery of the goods; in that case, if delivery is unduly delayed, the buyer may simply refuse to take title and the goods still belong to the seller. But when goods are made under special order they belong to the man who gave the order from the time they are made. The manufacturer may be liable for damages in failing to deliver the goods at the time he agreed to.

45. A manufacturer sent goods to this market and we bought them through his agent. Before making the purchase we had the goods examined by a regularly accredited inspector. He reported the goods were sound and merchantable. In making them up, however, we discover that there are serious defects in them, which decrease their value for our use very materially.

A. The agent, known to be such, cannot be held in this case, whatever the facts may have been. If the defect in the goods was a latent defect arising from some fault in the process of manufacture and not discoverable by inspection, then the loss must be borne by the manufacturer. One who buys goods after an inspection made by himself or his agent cannot afterwards complain of any defect which the inspection should have disclosed. Neither can he com-

plain of a hidden defect if it was unknown to a seller who was not the manufacturer or producer of the goods. If the unsoundness of the merchandise could have been discovered by inspection the seller or manufacturer cannot be held. If the inspector made a mistake in passing the goods and it arose from negligence and a failure to use ordinary care in making the inspection the loss must be borne by him; otherwise it will fall upon the buyer.

46. We purchased several carloads of pickles in Chicago last fall and afterward sold two cars at two different points, terms regular. One car was shipped to us before sale was made and was diverted in transit entailing delay. We billed the two cars on one bill, averaging the date of shipment and named terms as thirty days, or ten days less 2 per cent. No protest was made as to the terms named in the bill at the time of its receipt. When ten days had passed we wrote the buyer that if he wished to take advantage of discount terms he must send a check by return mail. The check was received thirty days from the date of the bill. We refused to allow a discount. The purchaser now claims that "regular terms" on pickles sold "delivered" mean that the purchaser is entitled to discount any time within ten days after arrival of the goods. What do you consider regular terms on pickles, and do you think our customer was entitled to discount?

A. The usage which is to govern in this matter is not that of the East, but that of the Western market in which this contract was made. If the sale was made upon "regular terms," that condition could not be changed by anything inserted in the bill by the seller alone some time after the contract had been agreed upon. The buyer, accordingly, was not bound to take any notice of terms named in the bill different from those under which he had made his purchase. The only solution of the difficulty is to ascertain from those engaged in the same trade in the market in which this sale was made the meaning of "regular terms," as used by them. If the expression has always the same perfectly distinct and well-understood meaning in that market, this will govern; otherwise the buyer can be held to the terms named in the bill.

47. We purchased one hundred bags of merchandise in France to be shipped to this country. The goods arrived at a different port than

was ordered; the bill of lading providing for transshipment from New York to Philadelphia. Shippers requested release, which we could not do till freight was paid, to ascertain whether there would be additional charges. There was a decline in the market, causing a shrinkage of $100 in value during a delay in the transshipment. Can we claim the loss from the shippers, or have we lost our right to do so by not objecting to the way of shipment, immediately on advice, on account of a possible delay in the transshipment?

A. We believe that our correspondents have lost none of their rights by failing to object to a shipment by another route than that named in the contract. When goods are actually tendered, and the buyer bases his refusal to accept them upon one or more specific grounds, he will not afterwards be heard to object upon other grounds not advanced at that time; but even in such a case the objections to which the buyer is to be confined must have been made to the seller direct. If a buyer simply states to some person other than the seller his reasons for refusal to accept, or if he states these reasons to the seller himself, but before delivery has been tendered in accordance with the contract, he will not be confined to such reasons only in the final contest. The buyer, in short, is not bound to anticipate that the seller will violate any other conditions of his contract except those which have been violated up to the time when any particular objection is advanced by the buyer.

48. 1. A bank issues a sixty-day letter of credit to me. On the arrival of the goods from a foreign port the bank sends a notice to me to take up the letter of credit. As the goods have arrived in thirty days from the issuing of the letter of credit am I compelled to take up same?

2. In case the goods were not sound when they were shipped on a cost and freight contract can I refuse to accept same?

A. 1. In such a case as our correspondent puts, the buyer of the goods, without regard to the time of their arrival, is to pay the draft drawn against them in accordance with the conditions mutually agreed upon when the letter of credit was taken out. The bank will sometimes allow the goods to be taken before payment of the draft

on what is known as a trust receipt; but the buyer is required, as a rule, to execute a sufficient bond of indemnity.

2. The buyer in such a case is not at liberty to reject the goods and hold up the letter of credit. At his instance the bank has become irrevocably bound, especially if the instrument evidencing its obligation should be presented by an innocent holder for value, and it is the first duty of the buyer to see that the bank suffers no loss through him.

49. A enters into a written agreement to deliver on April 1 $1,000 worth of merchandise to B on four months' credit. When the date for delivery arrives it is found that something has arisen in the meantime to largely weaken B's credit. Must A deliver his goods on four months' credit?

A. A person who has bought goods on credit, for future delivery, is bound by an implied contract to keep his credit good until the day of delivery arrives; if he does not do so the seller is absolved from his obligation to deliver the goods. It is not sufficient that the buyer's credit is "largely weakened" between the date of purchase and the day of delivery; that might occur and the buyer still have sufficient credit to cover a sale of this size; he does not undertake that his credit shall remain as high during the interval as it is at the time of the contract. Neither is it sufficient for the seller to allege a "gross irregularity of business" on the part of the buyer. There is no legal definition of such irregularity which would make it an excuse for failure to deliver in a case of this kind. If the buyer is paying his bills as fast as they fall due and are presented to him, if he is not asking for any further extensions, and if it cannot be shown that his assets are insufficient to meet his liabilities, the seller has no legal excuse for a failure to deliver the goods as he has agreed to do.

50. Please say if the seller and owner of merchandise retains the same rights of ownership in goods sent on memorandum as in those sent on consignment.

A. It is possible that the words "on consignment" and "on memorandum" in connection with sales and transfers of goods may be used in different senses by different trades.

But when there is no custom of the trade to the contrary goods sent on consignment are goods sent to an agent for sale on commission. Upon such goods as he succeeds in selling he takes out his commission and accounts for the remainder. Any goods which he cannot sell he returns, and all the goods remain the property of the person who sent them out upon consignment until they are sold by his agent, the consignee. Merchandise sent upon memorandum is sold before it is sent. The price, however, may not be fixed at the time of the sale, but may be left to be adjusted afterwards. There is sometimes an arrangement, in this case also, under which goods not sold may be returned, but that is a matter for special agreement in each particular case.

51. Has the United States Supreme Court, or the highest court in any of the States, ever decided as to the rightfulness of sales made at the Stock Exchange, Cotton Exchange or similar places?

A. The Supreme Court of the United States and the various courts of this and other States have very frequently passed upon the validity of contracts for future delivery made upon stock exchanges, cotton and produce exchanges and boards of trade. The main principles to be deduced from these decisions are the following: That such contract is valid and enforceable if it is really a sale, and not a mere cover for a gambling transaction; that, if it is in the form of a sale, the presumption is that it is a sale, and not an agreement for an illegal purpose; that he who alleges it to be a mere wager must prove his allegation; that the contract being in the form of a sale is to be regarded and enforced as a sale unless it can be shown that both parties to the transaction agreed, either expressly or by implication, at the time the contract was made, that there should be no delivery of goods, but a mere payment of differences.

52. In the month of February our salesman sold a party in Indiana six cases of goods from samples; the goods were to be made up in special assortment and delivered in August of this year. This order was accepted by us and a copy of the order was rendered. Our

copies of orders read "Not subject to cancellation." Our mill has since packed up the goods in question and they are being held at the warehouse awaiting the date of shipment. A few weeks ago this party wrote to us to cancel four of the cases he had given order for. We replied that we could not do this. He now writes us that under Indiana laws a merchant has the privilege of cancelling his orders any time before they have been shipped. Please advise if this is so.

A. The transaction described by our correspondent is a New York contract, to be interpreted in accordance with the laws of New York State, and Indiana laws have nothing to do with it. But it is a mistake to suppose that the laws of Indiana give a buyer of goods for future delivery a right to repudiate the contract at any time before the goods have been shipped to him. A contract for a sale of goods for $50 or more must be evidenced by a written contract or memorandum under Indiana law as under the statute of New York State, unless part of the goods are delivered at the time of the contract or part of the purchase price paid.

53. A lot of goods were sold to a European port on the following conditions: Price f. o. b. New York, landed weights, weighing for account of shipper. Terms: 90 per cent sight draft, balance prompt cash after weighing. On the bill of lading the steamship company stamped the clause: "Old bags more or less torn and mended." It is customary to ship the merchandise in second-hand bags but the shipper had the bags put in good shipping condition before the goods were embarked. The buyer now makes a claim for new bags and labor charges. Is the shipper liable under the contract for the above claim?

A. The covering or packing in which goods are shipped is no part of the thing sold and the buyer has no just cause of complaint if the case or covering is worthless, as merchandise, when the goods reach him. If the goods themselves have been sufficiently protected that is all the buyer is entitled to demand. This is the rule, at least, in the absence of any usage of the particular trade to the contrary. The buyer, in the case our correspondent puts, may justly make a claim for new bags and labor if repacking was necessary before the goods could be removed from the ship to a warehouse; but if rebagging was necessary merely in order to make the goods ready for further transportation, then he has no valid claim.

54. We purchased from a salesman a quantity of goods, he naming us a price at so much an inch or unit. There was nothing said about an extra charge for boxing or crating. We did not know that it was usual for such an extra charge to be made. They rendered an invoice at the price agreed upon but with a charge for crating. We have refused to pay the extra charge; but they claim that it is a usual custom with manufacturers of that class of goods to charge for crating and boxing. Please advise us who is right in the matter?

A. When goods are sold, and the seller does not expressly agree to deliver them at some other place than that in which they are at the time of the sale, a good delivery can always be made in that place. It is of no importance that the seller knows the buyer to be domiciled in some other place or that he knows of the buyer's intention to take the goods to that other place; transfer of title and possession is to be made where the goods are at the time of the sale unless the seller expressly agrees to take them to some other place and there deliver them. It follows that the seller is not to be at the expense of fitting the goods for transportation and delivery at a distant place unless a custom of the trade or his own contract places this expense upon him.

55. A received an order for merchandise from B. For credit reasons B arranged to have A charge the goods on this order to another concern, C, the goods to be delivered to B. C writes A the following letter: "Regarding order placed with you by B, you may charge same to us and make delivery to B." Would C's refusal to pay the bills charged to him in accordance with this letter hold in law?

A. If C wrote the letter here quoted before credit was extended to B then C can be held as a guarantor of the indebtedness of B. If credit had been given to B before the letter was received there is no consideration for C's promise, and he cannot be held. The word "guaranty" need not be used in a document binding the writer as a guarantor. All that is required is that he should promise, in one form or another, to be liable for the debt. To say "you may charge same to us" is to say "we will be liable for it." If it does not mean this it has no meaning at all. There must be a consideration to support the promise. The

consideration need not consist of money, and, whatever it consists of, it need not move directly to the guarantor.

56. A New York house sells a bill of goods to a man in Chicago, 2 per cent ten days, which, of course, means ten days from the date of the invoice. Is the man in Chicago supposed to have settlement in New York ten days from the date of the invoice?

A. If any person owes a debt payable in New York, with an agreement that he is to have a discount for payment within 10 days of a given date, the usual rule is that he must make the payment in New York, must have the money here, within 10 days of the given date, in order to entitle himself to the discount. There may, of course, be a custom of any particular trade, or a course of dealing between the same parties, which would make an exception of any given transaction. But there is one exception not depending upon such general custom or particular practice. Suppose the creditor has directed the debtor to remit by mail, or has chosen any particular carrier to bring the money, has, in short, given any directions as to the method by which the money is to be sent to him. Then the debtor is in time if, within the ten days, he deposits in the mail or delivers to that carrier the money or a check on a New York bank.

57. I give a broker an order to sell one hundred bales of cotton at 53 just before the close of the market at 1:51 P. M. The market closes at 52 to 53, and the order is not filled. The broker claims that a sale could not have been made at 53, but that he could purchase on "a split."

A. That a cotton market closes at 52 to 53 does not mean that sales were made at 53; it means that at the close 52 was bid and 53 asked. In order to hold the broker liable in this case the customer would be required to show, at the very least, that a sale was actually made at 53. In fact, he would be required to show more than this. It might well happen that a single buyer was willing to pay, and did pay, 53 for a small lot of cotton while a number of brokers were present with orders to sell at 53. Only one broker could make the one sale, and all the others are

not to be held negligent for not doing so. A broker, like any other agent, is bound simply to use reasonable skill and diligence in the business he undertakes.

58. In February last I purchased through a salesman a bill of goods to be shipped June 1. I have a copy of the order signed by the salesman. These goods have not yet been shipped, and the season for same is about half over. I have sustained considerable loss by not having the goods, not only in the way of profits, but also by disappointing my customers. I received word to-day that they would be shipped shortly. What can I do?

A. Our correspondent has a binding contract in this case whether the salesman was authorized to make it binding or not; the contract has been accepted by the principal, and that is sufficient to make him liable upon it. There was no express warranty that the goods would be shipped at the time named in the order; their shipment at that time is merely one of the conditions of the contract. The importance of this distinction is this: A warranty is, in effect, a separate and collateral agreement and it may be sued upon after the main contract has been carried out; but if goods are accepted and used that will be proof positive that all of the mere conditions of the sale have been carried out to the satisfaction of the buyer, and he has no legal ground of complaint or action thereafter. When these goods are tendered our correspondent must accept the delivery as a satisfactory fulfillment of his order, or he must reject them.

59. Sold to S. & Co., of Richmond, Va., for account of B. & Co., of Chicago, Ill., two cars of oats to equal sample "W" at 40c c. a. f., Richmond, Va., shipment in ten days, draft payable on arrival of cars. What inspection—Sample, final weight settlement, Chicago certificates.

The sample exhibited by the broker was dry and in good order. The car of oats arrived in a heating condition; the buyer claims they are not what he bought, not being like the sample he bought by, but being hot. The seller attaches to his invoice a certificate signed by an official sampler of the Chicago Board of Trade that he has compared with the sample held by the seller and declares the oats to be as good as the sample, and the seller contends that as he sold c. a. f. he is not liable for deterioration in transit.

A. A seller of goods is not bound, except by special agreement, to make delivery of them in any other place than that in which the goods are at the time of the sale. The presumption is that the buyer is satisfied to accept the goods where they are at that time, and if the seller is to transport them to some other place this obligation must be put upon him by some clause in the contract. The seller's agreement to pay the freight, as in this case, is not an agreement to deliver the goods at the end of the route; in fact, an agreement to pay freight furnishes in itself some evidence that delivery is not to be made at the buyer's place of business. If a seller in Chicago undertakes to deliver the goods in Richmond he must pay the freight upon them to Richmond, of course, and the contract will say nothing about freight. A stipulation that the seller shall pay the freight is necessary only where delivery is to be made at the seller's end of the route so that freight would fall upon the buyer except for this stipulation. Upon the facts stated by our correspondent, the seller can make a valid delivery in Chicago, the carrier being agent of the buyer.

60. A sells B merchandise stored in C's warehouse. By terms of the sale B has the privilege of the unexpired storage and insurance free, but at the termination of this period although B has taken a delivery order he has not removed his purchase. A, in order to obtain weights for his bill, is compelled to have the merchandise rehandled at some expense. Is B liable for this expense of rehandling?

A. If A sells goods in a warehouse to B, there is no implied undertaking on the part of B either that he will remove the goods when the existing storage term is at an end, or that he will weigh them at his own expense. Unless there is an express agreement binding B to weigh the goods this must be done by A. If the sale was by weight the buyer cannot be asked to pay except in accordance with some authoritative ascertainment of the weight, and the seller must know what quantity of goods he has sold before he can make a demand for payment which shall be binding upon the buyer.

61. A jobber purchases a car of tomatoes from the packer through a broker. Upon arrival the buyer examines and refuses to accept unless allowed a concession of two cents per dozen, claiming that the tomatoes are not equal to the grade purchased. The packer wires not to accept the offer, but instructs the broker to store the tomatoes. The broker claims the buyer must either accept the goods and pay the contract price or reject them. Is the jobber compelled to turn over the tomatoes to the broker as per shipper's instructions, or can the jobber keep them and adjust a settlement later? There was no arbitration clause in the contract.

A. If the broker has possession of the tomatoes, in this case, he is clearly not bound to deliver them to the buyer unless the buyer will agree to accept them as a satisfactory delivery under his contract. The broker may hold the tomatoes and allow the buyer to go into court for his remedy, or he may allow the buyer to take them and then compel him to pay full contract price for them. The principle is well settled, by a large number of decisions, that, under such a state of facts as this, the buyer must either accept the tender as satisfactory or reject it altogether. It is equally well settled that if he does accept the goods, however much he may protest against their quality, he can be compelled to pay for them the amount named in his contract.

62. A buys a cargo of molasses to arrive from B; the same is bought to be delivered at New York at a certain price. When the vessel arrived B delivered eight hogsheads short of what the vessel brought here, saying the government would not pass the eight hogsheads, claiming the same to be sugar instead of molasses. A accepted a delivery of the remainder of the cargo and paid for the same, at the same time making a demand for the shortage. Would A be entitled to the eight hogsheads which the government declined to enter as molasses?

A. A seller cannot be compelled to deliver under his contract any goods other than those which he has agreed to deliver. In the case put by our correspondent, B is under no obligation to deliver sugar under a contract calling for molasses, and the same proof which was sufficient to show that the article was molasses for the purposes of

the duty will show the same fact in a suit upon the contract.

63. Can a brewer who has contracted hops with a dealer, one or more years previous to the time in which the hops are grown, cancel said contract under the pretense that the laws do not allow one to sell anything that does not exist?

A. There is a general rule of law that a non-existent thing cannot be the subject of a sale; but, like most other general rules, it is not without exceptions, and one of the most important exceptions includes the very subject of this inquiry, hops and agricultural products generally.

64. Sold for S to P 150 tons Gartsherrie pig iron, No. 1, at $29 per ton, one-half at six months, one-half cash, less 4 per cent., on board Siddons. The iron proved below grade. Has P claim for damages?

A. On this point Justice Hurlbut, in giving the opinion of the court, said: "In my judgment the contract was not a sale, but an agreement to sell, which was not executed, and which could only be required to be executed upon the arrival of the ship with the iron on board. The arrival of the vessel without the iron would have put an end to the contract, which was conditional as a sale to arrive. The vessel was at sea at the time. This was known to both parties, and neither could be certain either of her arrival or of her bringing the iron. If a part only had arrived the plaintiffs would not have been bound to deliver nor the defendants to accept it. There was no warrant, express or implied, either that any iron should arrive, or that arriving it should be of a particular quality. One hundred and fifty tons of Gartsherrie iron of the quality denominated No. 1 was expected to arrive by the Siddons and the contract was to the effect that if that quantity and quality of iron did so arrive one party should sell and the other should receive it at a certain price per ton. The iron called for by the contract did not arrive, but iron of a different quality, and I think the contract was at an end."

65. On December 21 A buys from B 1,000 cases of merchandise for delivery in January. The merchandise is manufactured in Europe. On January 17, B notifies A in writing that the goods are on steam-

ship John Smith. No reply is made, but on January 31 A makes demand on B for the goods, B replies that they are on steamship John Smith, overdue and daily expected, that as A made no reply to notice of January 17 that he (B) is only obliged to deliver on arrival of steamer, and not during January. Is B's position correct?

A. The delay of the John Smith is no legal excuse for a failure to deliver goods that were contracted for in January, and the failure of the purchasers to say anything when notified the goods were on board of that vessel cannot be interpreted as a waiver of their claim to have the goods delivered within the time prescribed in the sale.

66. A bill of $2,000 was sold on sixty days' time, net. The buyer on the day of sale, upon the receipt of his bill, sent a check less sixty days' interest at the rate of 6 per cent per annum. The seller returned the check, stating that the buyer might have the sixty days' time; but he would allow no interest to be deducted for the unexpired time. Can the seller be forced to accept this settlement?

A. No man can be compelled to accept a payment before it is due by the terms of the contract. Not only is the offer to pay cash down on a sixty-day credit, less the legal interest for that time, one which the creditor need not accept, but he is not obliged to accept the face of the bill with no interest deducted, if he does not choose to do it, until the end of the sixty days.

67. 1. We made an offer to a manufacturer's agent to take ten barrels of their product at two cents less than other quotations; he said he would try to have the order put through for us and immediately telephoned his partner about it and then left our office. Within ten minutes we changed our mind and telephoned the party, countermanding our offer. They replied that the order had been already confirmed by wire from New York and the order entered (seemingly a physical impossibility) and that we were legally bound to accept the goods, so we authorized them to be shipped. We still are in doubt whether we are obliged to take the goods. Will you give us your opinion?

2. In another instance, a broker offered us some goods, saying that it was the balance of a lot. On the representation of the broker that this was the entire balance, we made an offer, which was accepted. As soon as the contract was made another lot of ten barrels was offered under the same conditions and in the same way. Are we

bound in law or in equity to accept the goods, if the seller cannot show that the goods belong to different parties?

A. 1. An agreement to buy where there is no corresponding agreement to sell lacks consideration and amounts merely to an offer which may be revoked at any time before performance or a binding acceptance. In the case under consideration there appears to be some doubt as to whether the offer was or was not accepted before it was withdrawn. If it was so accepted the contract was complete and became equitably binding upon both parties. But if the value of the goods was more than fifty dollars no contract for the sale of them would be legally binding unless a memorandum was made in writing and signed by the buyer, or unless he paid part of the purchase price.

2. If the misrepresentation here referred to was material, if it was about a matter of importance in this particular contract, if the buyer was deceived by it, and if he has suffered damage, he may refuse to accept the goods, or if he has taken them and paid the price he may offer them back and recover his money. The seller, however, is not bound to show that he made no misrepresentation. This will be assumed until the buyer shows affirmatively that misrepresentation was used. When fraud or deceit is alleged as an excuse for not complying with the terms of a contract the fraud or deceit must be proven.

68. A dealer made us two shipments, by vessel, of boots and shoes, both of which fell short in contents, and boxes showed evidence of having been opened. The dealer refuses to stand the loss and says we must look to the vessel. The captain declines responsibility as the bill of lading contains the following: "It is mutually agreed between the master and shipper that the landing of the above goods on the wharf at port of discharge shall constitute a delivery of the same, weight, gauge and contents unknown. Not accountable for breakage, leakage or rust." Will you please say who is liable for the loss in this case?

A. The sellers of the goods having delivered the full quantity sold by them in good order on board of the vessel are absolved from all further liability and can collect the full amount of their bill. The vessel then becomes respon-

sible for their safe delivery on the dock. The reservation concerning breakage, leakage and rust does not apply to stealing from the boxes, and the courts have decided that neither masters of a vessel nor managers of railroads can by any form of words relieve themselves from liability for the misconduct of those in their service. All that the purchaser in this case has to do is to prove by the sellers that the whole quantity was received by the ship, and that the packages were short on their arrival at their destination. He can then, if the master refuses to pay, libel the ship and collect the full value of the lost goods.

69. A receives from B a consignment of merchandise, for which he (A) accepts a ninety days' draft for $600, representing at that time half the value of said consignment. A not receiving the documents in time, entailed extra charges, so the total expenses proved about $300 more than B said they would and the proceeds from sales of the goods was that much short of meeting all the payments, including the draft. What can A do now, if B, who lives in Europe, refuses to send him the $300 to pay the draft when due? Can A, depositing the net proceeds of the account sale in a bank, refuse to pay the accepted draft?

A. A contract evidenced by the drawing, accepting, making or indorsing of a bill or note may be explained as between the immediate parties. It may be shown, for example, that there was no consideration, or that the consideration has failed, or a set-off may be pleaded. But these defenses are not available, except as between the immediate parties. A draft accepted unconditionally cannot be shown to be without consideration when it is in the hands of an innocent purchaser for value, who has taken it before maturity. It is for this reason that drafts are sometimes accepted, "subject to contract," or with the addition of some similar phrase making the obligation to pay dependent upon the fulfillment of the contract. In the case here put the defense of our correspondent will not avail, if the draft is presented for payment by any one who has purchased it in good faith, relying upon the acceptance.

70. A person from whom we bought goods dies and our check

made to his estate is returned and his clerk demands one to the order of the man who is dead.

A. We believe there is no way in which our correspondent can be damaged by making a check to the order of a man who is dead when requested by his clerk to do so. Neither does it appear that there is any reason why the old billheads should not continue to be used. Arrangements may have been made to carry on the business indefinitely under the name of the deceased, but whether they have or not no harm is likely to come to a customer from making out checks as directed, or from paying bills made out upon the old forms.

71. A sells B a bill of plate glass, guaranteeing its safe delivery in New Orleans, for which A charges insurance. Goods arrive in New Orleans broken. A duplicates the order. Is A entitled to insurance on the second lot?

A. A's guaranty warrants the delivery on one charge for freight and insurance; and anything over this must be borne by himself.

72. We took an import order from a house in Buffalo; the order copy reads: "To be shipped July or August." Goods arrived by ship Victoria July 29. On account of rains the goods were not shipped before August 7, some public store packages a few days later. The customer declares now that the goods were bought for July shipment. The order was signed by the buyer and our agent. Can we compel our customer to accept the goods?

A. The goods may be tendered the buyer, and if he declines to take them may be stored for his account, and the price recovered; or they may be sold on the best possible terms and he be made to pay the loss, if any.

73. We recently shipped two cases of goods to a jobber, who claims that same are not up to the grade bought. We have asked him to return these goods and guaranteed to replace same with merchandise that was absolutely right. He refuses to do so and states that he will not return them until he receives goods to replace the lot he refused to accept. We have sold these goods to another party, who asks for delivery. In case he refuses to return these goods, are we under any obligation to make second delivery?

A. The purchaser, in a case of this kind, has no right

to any goods that previously belonged to the seller except under the contract which he has with the seller. When the seller sends the purchaser any goods, and the purchaser keeps them, he keeps them either wrongfully or else as being in compliance with his contract. But the courts will not allow any man to claim, for his own advantage, that he is a wrongdoer when there is a possible and reasonable explanation of his act which makes it lawful. For this reason, among others, a buyer of goods, when there has been no warranty of quality, who retains the goods sent to him, and refuses to return them, is always held to retain them as being perfectly satisfactory and in compliance with the contract. Any complaint he may make about the delivery is of no importance; it is his act that counts. The courts will insist upon taking the most charitable view of his conduct, whatever he may say, and the most charitable view is that he is doing right, and not wrong, and is keeping the goods because they are a good delivery under the contract. Our correspondents can demand that the goods be returned, if they choose to do so, but they cannot enforce the demand. If the buyer does return the goods, in answer to such a demand, he will have a claim against the sellers for another delivery, and a valid one under the contract, or for a breach of the contract in failing to make a good delivery in the first place. If no such demand is made, or if it is made and not complied with, the buyer can be compelled to pay the contract price of the goods on the theory that his holding them is an acceptance under the contract. It is idle for him to say that he does not accept them, keeping them is acceptance. No second delivery need be made unless the first delivery is promptly and properly refused and returned.

74. Does our commission merchant make legal payment for goods purchased in his name if we send him a banker's draft payable to order of manufacturer? In explanation, our shippers in Liverpool, to conform to a new oath issued by our State Department, must make oath before the United States Consul that he is the actual purchaser of goods shipped to us.

A. We do not find that there has been any decision of the courts relating to the oath on invoice and covering the

precise question raised by our correspondent. But there can be little doubt that the courts would hold a payment made in the way he described to be valid. A large majority of the payments for goods imported are made in this or a similar manner, and it would be an unusual course to hold that a payment made in good faith and in a manner satisfactory to both parties to the sale was not such as to satisfy the invoice oath.

75. A firm has been in the habit of sending us by their drivers or other persons orders made out on regular printed order slips, for us to fill. One of these orders is presented to us, duly signed by the firm's name, and is filled accordingly and subsequently found to be forged. A week later, the firm notifies us to fill no more orders on these slips, as their order book had been lost. Should or should not the said firm be held responsible for the goods delivered by us on their forged order sheet?

A. If by the carelessness of the firm in losing their order book they have given some rogue the facilities for committing a fraud they may be morally bound to bear the whole or part of the loss resulting therefrom. But they are under no legal obligation to remunerate the loser any more than a depositor would be to reimburse a bank for the payment of a forged check made out on one of his blanks which had been lost.

SEALS.

1. A chattel mortgage does not require a seal by law, but one I have in mind is an old form of chattel mortgage containing the covenant to pay, and if it is made a sealed instrument by reason of the party attaching a seal it would seem that the action on the covenant will lie for twenty years?

A. It is of no importance, with reference to our correspondent's question, whether any document—a chattel mortgage, a promissory note, or any other—requires a seal or not. If it is in fact made in the form of a sealed instrument it is to be regarded as a sealed instrument in law, even though it might have been just as valid and effective if not under seal; and suit upon a sealed instrument may be brought, in many states, at any time within twenty years from its date.

SELLER AND PURCHASER.

(See also Sales.)

1. A firm of importers places an importation order for fancy silk and wool dress goods to make, and the order calls for fifty metres each. The goods are delivered, averaging five yards over, and are refused on that plea. The manufacturer claims such goods cannot be produced without variation in lengths. Will the custom of the trade support the importer or the maker?

A. The custom of the retail trade in dress goods to sell for very small profits, forbids all waste. Many sell in lengths for dresses, and make a close calculation to avoid remnants. A manufacturer ought to be able to know how much his fabrics will stretch in finishing, and to come nearer than five yards in a piece when special cuts are ordered. We do not believe that a buyer who orders special cuts of 55-yard pieces, if this order on such terms is accepted by the manufacturer, can be compelled to take a lot measuring sixty yards. Neither the law nor custom would compel him to accede to a variation of so much importance from the order which was given in such specific terms.

SET-OFFS.

1. A buys merchandise from B and settles same with his own note. B buys merchandise from A and settles same with his own note. The merchandise which B bought from A exceeds that which A purchased from B. B fails. Can A apply his note against B?

A. The facts stated by our correspondent form the basis of the ordinary case of set-off. Neither A nor B, whether either of them become insolvent or not, can be compelled to pay the whole of his debt to the other, after the debt of the other to him has become due; he may deduct the amount of the debt owing to him and pay only the balance.

2. I endorse a note for my landlord for $100 on a local bank here, and I also pay $100 a month rent for his store, which I pay in advance. The note comes due June 1, and I move out of his place May 1. Can I hold back the April rent as I have reason to believe he cannot pay the note and the bank will look to me for payment?

A. If A owes B $100 due on April 1 he cannot refuse to pay it upon the ground that B will owe him the same amount two months later, which he may be unable to pay; much less can he resist payment when the fact is simply that B may possibly come to be indebted to him in the same amount two months later, and that there is some prospect that he may not be able to pay it. Our correspondent, in the case he puts, will have no claim at all against his landlord unless the latter fails to pay his note when it falls due on June 1, and the tenant is then called upon to pay it. Then for the first time will there be an enforceable obligation of the landlord towards the tenant. If the tenant refuses or fails to pay rent when it is due, on April 1, the landlord may bring suit immediately and secure judgment without regard to the outstanding note.

SHIPPING.

(See also Common Carriers.)

1. On September 2, we wire a merchant in New York for price of merchandise. He replies, "Ten cents per pound, freight prepaid. Terms, ten days, payable in New York." The goods are shipped and are destroyed by fire in transit; who is to make claim on the railroad company to recover damages? Are the goods ours before they reach our railroad station? If shipment is delayed two days in merchants' warehouse, New York, when should the bill be dated, and when is it due in New York?

A. The general rule is that when a contract of sale is completed, and nothing further remains to be done on either side, then the title to the goods becomes vested in the purchaser. In the case put by our correspondent, the terms of the sale being agreed upon, the goods became the property of the buyer as soon as they were set apart to him. This, of course, in the absence of any agreement to the contrary. The fact that freight was to be prepaid does not change the rule. The goods having been destroyed in transit, claim should be made by the purchaser; but in cases where goods are to pass over different lines and the accident happens nearer to New York than to the place of destina-

tion, it is a common practice of New York merchants, upon request, to make a claim and collect in behalf of the purchaser. The custom of merchants here is to date bills upon the day of shipment, and in the case under consideration the bill would be due in ten days from that time.

2. We have received of late large shipments of merchandise which were badly damaged, but in almost every instance the steamship companies insisted upon our signing a receipt that we received these goods in good condition, thus making us sign to a lie, but unless we would sign "received in good condition," no matter how badly damaged the bales were, they would not deliver to us our goods, but put them in a store at our expense. What protection has a consignee against this outrageous position which the steamship companies take?

A. A common carrier is not bound to deliver goods to the consignee unless the latter is willing to give a receipt for them. But the consignee on his part has a right to examine the goods before accepting them, and if they are found to be damaged he is under no obligation to declare in his receipt that they were received in good order. If the carrier refuses to deliver up the goods without this the owner may sue for conversion. If, as is very often the case, a receipt is delivered to the carrier before the goods are examined, declaring that they were received in good condition, this becomes prima facie evidence of the truth of the statement, though it may be explained by proof showing the actual facts. But an owner is in a much better position if he sues for possession of the goods before giving such a receipt than if he attempts to explain it away after he has given it.

3. What constitutes legal holidays in a charter party, going from here to Fernandina and back, with a certain number of days to load, Sundays and legal holidays excepted, and discharge here according to custom of port?

A. The regular holidays as enacted by the laws of the states, and any days appointed or recommended by the Governors or by the President, as a day of thanksgiving or fasting. The charterer is entitled to the number of lay days over and above the holidays, no matter if work is done on the latter.

4. Four men purchase jointly and fit out a vessel for a whaling voyage. On her return the result shows a loss. An effort to sell her fails, and then three of the same party propose to fit her out for a second voyage, but the fourth man declines to contribute his portion of the money for fitting out. Nevertheless she is dispatched again and returns with a fair profit. The vessel is then sold and the proceeds divided equally among the four. Is the fourth man entitled to any of the profits of the second voyage, and if so, what proportion of the same?

A. A majority of owners have the right to determine as to the employment of a vessel, but they cannot deprive the dissenting minority of a share in the profits. If the second voyage had resulted in a loss like the first the owner who refused his consent must have stood his share of the deficit, as in a sale of the vessel the debts due would have to be settled before the proceeds were divided. The majority can deduct from the gross profits their expenses of outfit, and the remainder must be equally divided according to interest.

5. A charters a vessel and arranges verbally with regular shippers to receive certain goods up to a certain date, say the 15th inst. B, one of the shippers referred to, orders goods forwarded for shipment within the specified time, but while some of the merchandise is *en route*. A notifies B that the vessel will not receive beyond the 11th inst., and the goods arriving on the 13th inst. are shut out. A in the meantime has received large parcels of goods from irregular shippers which presumably have not been engaged for and consequently is enabled to complete loading some four days earlier than anticipated. B's goods, or a portion of them, have therefore to wait until the next vessel is placed on the berth, besides sustaining additional expense in respect of cartage, storage, etc. As this sort of thing is of frequent occurrence the question arises, how can B protect himself and insure the freight arranged for being shipped in future?

A. It is easy for B to protect himself by having his contract put in a shape to be binding on the holder of the charter. If A had agreed in writing to receive a given quantity of merchandise from B at a rate specified, the whole to go in a vessel that was named, he would be compelled to take them by that vessel if offered in season, or pay the damage suffered by his refusal. On the other hand B would be required to furnish the entire quantity named

in the contract within the specified time or suffer the penalty of his breach of the agreement.

6. A steamer is chartered on the current form of time charter-party to run between ports in the West Indies and the United States. In case of quarantine preventing the vessel from entering a port to which she may be ordered by the charterers to load or discharge cargo, is the loss of time to be borne by the owners or by the charterers?

A. Where the hire is payable for the voyage or on delivery of the cargo, the owner of the ship must bear the expense of all delays. But where the charterer hires a vessel at so much a ton per month, for a specified time, he is not entitled to any deduction for the time the vessel may be detained in port by any embargo laid by the home government, or by a hostile seizure followed by a restoration. The owner is entitled to the stipulated compensation for the whole time the vessel is out of his possession, in pursuance of the terms of the charter-party, provided the delay does not arise from his own fault.

7. Suppose a vessel bound to New York or Philadelphia should be found at anchor off or inside of Hatteras with both anchors down and holding safely, while the captain and all hands had temporarily gone ashore to obtain assistance from Norfolk and had engaged a tug-boat from Norfolk to take her to her port, a steamer comes along and takes her from her mooring and tows her to another port. The vessel had her ensign in the rigging, union down, before anchoring, and when they went ashore neglected to take it down. Had the steamer a right under such circumstances to take her from safe mooring, tow her to another port than her destination, and be entitled to salvage?

A. The United States courts hold that hoisting a signal for assistance implies that the service desired deserves salvage. The mere quitting of a ship, however, in order to procure assistance and with the intention of returning is not an abandonment in law. Nevertheless, if a ship be left, though not derelict, one who in good faith takes possession as a salvor is not a trespasser, but has a reasonable claim for salvage, according to the good he actually does; but unless the vessel has been utterly abandoned so as to become a derelict in comtemplation of the law, the salvors

have no right to exclusive possession and are bound to surrender to the master on his appearing and claiming charge.

8. We sell a lot of goods (in bags) for shipment from abroad, and the contract is worded "to be taken ex ship by buyers upon arrival in port of New York when vessel is ready to discharge." What we desire to know is, what constitutes "ex ship"?

A. The contract is satisfied when the goods are unloaded upon the wharf and so placed that the buyer may examine their condition and ascertain the quantity offered.

9. If a vessel is taken to a safe anchorage in river and freight delivered to it on lighters, whose lines should be used in making lighter fast to the ship, the vessel's or the lighter's?

A. The lighters must use their own lines in making fast to the ship. We do not think the question has ever been brought into court, for the responsibility of making fast to the ship by the lighter's own tackling was never in dispute as far as we can learn from inquiry here.

10. A firm purchased a lot of canned goods from a canner in Maryland. They paid for the goods in due time, deducting 1½ per cent discount for cash, and also 16 cents per hundred for over charge in the freight as they came all rail instead of "lake and rail," as ordered. The canner wrote him he had never received any such instructions and he must settle that with his brokers. The brokers disclaimed having had any such order and nothing of the sort could be found in any of the correspondence. What is the buyer's legal right in holding back this freight charge in his settlement?

A. When a buyer of goods intrusts the seller with the duty of shipping them to him, and does not issue any definite shipping instructions, the seller is not bound to select the cheapest route. He is simply bound, as any other agent would be, to send the goods over any route that might be selected by an ordinarily prudent man for his own goods of the like kind and value. The agent, in other words, is not called upon to exercise the highest possible degree of skill in forwarding the goods, but only a reasonable degree of skill. If he has done this his duty is complete. If the buyer wishes the goods sent by a particular one of several reasonably direct lines he should give timely instructions to that effect.

11. We shipped a case of goods on the S —— and from the fact that the vessel sunk, have every reason to believe that the goods are lost. On whom does the loss for the value of the goods fall, in the event of no responsibility being attached to the owners? The goods were sold on the terms as previous shipment, viz.: deliverable on dock.

A. If the goods were deliverable on the dock here with no obligation to insure, the loss falls on the buyer, the water transit being at his risk.

12. A person buys a bill of goods and orders them shipped to a vessel as early as possible; they are shipped on a lighter which cannot get alongside the vessel the goods are to go on, as the slip is blocked by a steamer (idle), vessel or lighter on the other side of the slip. Whose place is it to have a passage cleared (or to get the harbormaster to clear one), and who is responsible for demurrage on the lighter, caused by no one having the obstruction cleared, although the vessel and harbormaster have been requested to do so by the captain of the lighter?

A. If a seller of goods agrees to deliver them on board a vessel free of expense to the buyer, he must himself pay the cost of such delivery, whether it is unusually large or not. If the title to the goods has passed before delivery to the vessel, and the seller has undertaken to make such delivery simply as an agent of the buyer, the latter must bear the expense. But in this case it is the duty of the seller to have the work done as expeditiously and cheaply as possible; and in either case it is his duty to use his best efforts to have a passage cleared for the lighter. In the absence of any agreement, either expressed or implied, as to delivery by the seller, the buyer must bear the full expense of removing the goods.

13. Under a contract, of which the inclosed is a copy, the vessel arrives and commences discharging June 6, so storage privilege expires July 6, and settlement should be made on or before this day. This will fall on Sunday, so must settlement be made on Saturday or Monday?

A. The general rule is that when a note falls due on Sunday, without grace, or when any duty arising under a contract comes upon that day, the person bound has until the following Monday to pay or to fulfill his contract obli-

gation. The only reason to doubt the application of the rule to the present case is that here settlement is to be made "on or before" the date which falls on Sunday. This lends some color to the claim that when it becomes impossible or illegal to make the settlement on the last day the person bound is obliged to make it before that day.

SIGNATURES.

1. Please advise us as to whether an order for delivery of merchandise from warehouse with a typewritten or printed signature only is, in the absence of instructions to the contrary, a valid order.

A. An order for delivery of merchandise from a warehouse with a typewritten or printed signature only is, in the absence of instructions to the contrary, a valid order if it was issued by a person competent to give a valid order. It is safe for the warehouseman to act upon an order so signed if he is in position to prove that it was issued by one having authority. The only weak point about an order of this kind lies in the difficulty of proving the signature. An owner of goods cannot order them out of the warehouse, by any form of order whatever, and then complain that he has been obeyed. If he places his name at the end of an order by the use of a rubber stamp, or directs that it be placed there by a typewriter, or adopts a printed signature as his own for the purpose of removing his goods, he is in any of these cases bound precisely as if he had signed his name with a pen. But if he had signed it with a pen the warehouseman would be in better position to recognize the signature as genuine, and in case of dispute he could call in others who would testify to the genuineness of the signature.

SPECIFIC PERFORMANCE.

1. A, of Pennsylvania, owner of an uncultivated piece of land in the State of Iowa, had offers for it from three real estate brokers in the village adjoining. Finally, A telegraphed B, real estate broker, accepting his offer from C, small part cash, balance mortgage. Circumstances caused a change of mind, and in forty-eight hours A tele-

graphed B to withdraw the land and would not sell at present. C holds it to be a sale, and enters upon the land, and threatens to enter suit to compel A to make a deed. Will A be compelled to give deed to C under the above circumstances?

A. We believe our correspondent is legally bound by the transaction here described. The offer was made and accepted in writing, and as soon as it was accepted the contract was complete and binding on both sides. No money consideration was necessary, inasmuch as each promise furnished a sufficient consideration to support the other. For an Iowa case, affirming the validity of a contract for the sale of land under a state of facts almost identical with those of the present case, see 63 Iowa, 218. .

STATUTE OF FRAUDS.

1. A leases of B, agent, a store for a term of three years, without witness. After repeated demands were made B presents lease for signature, but for only two years. A in meantime has taken possession and paid one month's rent in advance. Has A any redress or may he compel B to furnish the lease according to agreement?

A. The courts hold that where a person is let into possession of premises under an agreement for a lease, or in accordance with a lease void under the Statute of Frauds, he is a mere tenant at will; but upon the payment of rent by him, he immediately becomes a tenant from year to year, upon the terms of the intended lease, so far as they are applicable to and not inconsistent with a yearly tenancy. Though an action at law cannot be sustained in favor of either party upon an oral contract for a lease for a term exceeding that which, in accordance with the statute, may be granted by parol, yet a court of equity will decree a specific performance of such a contract, notwithstanding the Statute of Frauds, when there has been such a part performance of the agreement that to refuse it would work a fraud upon the person seeking its specific execution. In order to warrant the exercise of this equity power, the contract must be clearly established by proof, or must be admitted by the pleadings.

2. The maker of an outlawed note upon which nothing had been paid promised not long since in the presence of several witnesses to pay the note. He did not fulfill his promise. If suit be brought will the evidence of the witnesses that the maker verbally promised payment be sufficient to take the claim out of the statute of limitations?

A. In England Lord Tenderden's act, and a similar statute in most of the States of this Union, require a new promise to be in writing to allow the commencement of an action for a debt, the legal collection of which is barred by the statute of limitations.

3. A piece of real estate was left by will to be appraised and then the heirs to have the privilege of accepting it at the appraised valuation in the order of their ages, the oldest first, and so down. The oldest and second oldest and youngest entered into an agreement to take the property and made known their intention to the executor. Now the oldest refuses to keep good the promise by refusing to allow the youngest heir to purchase the one-third part as agreed upon. What redress has the youngest heir?

A. The contract described by our correspondent is supported by a sufficient consideration. The oldest heir did not wish to buy the whole property at the appraised valuation, and had no authority under the will to take less than the whole; but wished to purchase one-third of it, however, and the promise to allow each of the other heirs to take a third was supported by their promise to allow the oldest heir to take a single third instead of passing the option along, as the will directed. The contract did not require a written note or memorandum to support it, because it was not a contract for the sale of land. Neither of the three parties owned the land and neither proposed to sell to the others. It was simply a kind of partnership arrangement under which each agreed to furnish enough money to pay for one-third of a piece of land to which no one of them then had any title. By this contract the younger heirs agreed to waive their right to buy the whole of the land—a right which descended to the older of them the moment the oldest of the three announced a determination not to take the whole. The contract can be enforced as it was made.

4. A mill from which we have frequently purchased goods has not been in the habit of regularly acknowledging orders by mail, fully as many having been filled without previous acknowledgment as acknowledged and filled. In no case have the orders in question been declined by letter. In the absence of specific declination of orders, and following the precedent of past experience, we assumed they had been accepted. Please give your opinion.

A. Custom cannot take the place of positive law, and it is expressly provided by statute that a sale, to be enforceable, must be evidenced by some written document.

5. "Confirming our conversation of this date, in consideration of your having given us an order for ——, we agree not to sell these to anyone else here in the city before the first of January; as to the selling after the first of January, we agree to do the fair thing in this matter."

We have delivered and Mr. P has accepted and paid for about $1,500 worth of these goods. Some time ago he refused to receive any more of these goods, and after we had urged him to receive the goods, he remarked: "The order was not given in writing, so you cannot enforce the delivery of the goods."

Under these conditions, as stated, do you think we could successfully sue, after tendering the goods, for the amount still due us?

A. Our correspondents have a choice of three remedies in this case. They may hold the goods subject to the buyer's shipping instructions, inform him that they are so held, and then sue him for the contract price; or they may keep the goods as their own and sue for that amount, if any, by which their market value is less than the contract price; or they may sell the goods, for account of the buyer, at a time and place whereof the buyer has ample previous notice, so that he may buy them in himself or see that the sale is fairly made, and then they may hold him for any loss resulting. They may hold him, in that case, for any deficiency in price, and also for the reasonable cost of advertising and conducting the sale. The buyer is altogether mistaken in supposing that he cannot be held because there is no written memorandum or evidence of the sale. Such writing is necessary in some cases, but not in all.

STATUTE OF LIMITATIONS.

1. About sixteen years ago, a wife and husband (having children living) released the executor of her father's estate from all claims against him as executor except for certain unsold properties. She left a balance due her in the hands of said executor, for which she took his note. When the executor sold the above reserved property he paid the amount of her share and about two hundred dollars more. About one year after she was taken to the lunatic asylum, where she died. Can this debt be collected?

A. The statutes of some States provide that certain actions, including actions on promissory notes, "shall be brought within three years next after the cause of action accrues; but if any person that is or shall be entitled to such action be within the age of twenty-one years, *feme covert, non compos mentis*, imprisoned or beyond the seas, such persons shall be at liberty to bring such actions, so as they bring them within such times as are before limited," after the disability is removed. On the death of the person having the right to such action, the right goes to her legal heirs, who must sue within three years. In the case cited by our correspondent, in his State, if suit was brought within three years after the death of the wife, it would not be barred by this statute; otherwise it would be barred. In some other States the time would vary.

2. In case of a conveyance of property, the grantee assuming a mortgage thereon, can the mortgagor plead the Statute of Limitations as a defence when sued for a deficiency, if more than twenty years have elapsed since the date of the mortgage and he has not ackno edged the debt during that period?

A. The Statute of Limitations begins to run, not from the date of a mortgage, but from the time when the mortgagee's right of foreclosure accrued. There is no such relation, as of principal and agent or otherwise, between the original mortgagor and a purchaser of the equity of redemption that any acknowledgment by the latter should be sufficient to bind the former; and the best considered opinions are to the effect that he is not bound.

3. A gives to B a note of $500 but leaves the space open in which generally the time of the running of the note is stated. Now after twenty years B makes the note become due by filling out himself to that effect the empty space.

A. A blank in a note may be filled out by the holder either in case it was accidentally omitted, or was left to his option. If the note was given and no interest paid on it, or notice taken of it by either of the parties, the holder would have to show that it was left to his option at what date it should be made payable, to bring it now clear of the statute of limitations.

4. A person doing business in New York and residing in New Jersey contracted a debt in New York eight years ago. The debt has never been paid nor has any action been taken by the creditor to collect it, although the debtor has been in New York almost every day during the eight years.

A. It being known to the creditor that the debtor came to the city, or was in the city, the debt begins to run from that date precisely as if the debtor was here, and the debt is therefore barred from collection by suit.

5. A loans B $1,000 and takes a demand note "with interest from date." A dies ten years after, never having made demand on B for the money. Does the statute of limitations bar the executor from making demand?

A. The period of limitation begins to run, in the case of a promissory note, whenever a cause of action has accrued. This happens when the note falls due, and the time of its falling due depends upon the terms of the promise. Where there is no evidence, aside from the note itself, to explain the promise, a note or bill, either with or without interest, payable on demand, is always mature and may be demanded at any time. Accordingly, the statute of limitations, in the case of a demand note, begins to run from the date of delivery.

6. Suppose a bookkeeper has made false entries in the books and thereby caused a loss to his employers and these wrong figures are now, after ten years, discovered, can he still be reached for it?

A. The limitation of the period during which an indict-

ment may be found is three years in some States, varying in others, provided the offender has not been out of the country. A civil suit may be commenced for the recovery of money embezzled at any time within six years in many States after its discovery.

7. B buys a bill of furniture from an instalment house, agreeing to pay so much weekly until the bill is paid up in full. When one-third of the amount of the bill is paid up B advances some claims against the furniture people and refuses to pay anything more. That was five years ago. The instalment people did not make any legal fight about it, but indulged in plenty of threats and letter-writing. Please state if the right to sue on this contract is void and null by limitation.

A. When a debt for furniture, or any other debt, is to be paid by instalments the obligation to pay each instalment forms a separate contract with reference to the statute of limitations; that is to say, in many States the creditor must sue for each unpaid instalment within six years of the time it was agreed to be paid, or he cannot sue for it at all. But when his right to sue for one instalment is thus barred by the statute of limitations, he may still sue for the next or any subsequent instalment which has fallen due within the last period of the statute of limitations of his State.

8. If a cause of action has arisen in one State, and the debtor who is to be made defendant now resides in another State, in which it is intended to bring suit against him, please say whether the time within which the suit must be brought is that named in the laws of the first State or in the laws of the State of the suit.

A. It is a general rule of law that where an action is brought in one State or country upon a contract made in another, the statute of limitations which applies is that of the State in which the action is brought, and not that of the State or country where the contract was made. The reason of the rule is that the statute operates merely upon the remedy, and forms no part of the original contract; and where a remedy is sought in any jurisdiction it must be sought in accordance with the laws there prevailing.

9. A debt is due to me arising out of a contract made some time ago in Germany. The debtor is now in Pennsylvania, where he has some property, and a judgment against him there would probably bring me the money unless the statute of limitations stands in the way. The debt is not yet outlawed under the law of Germany, where it was contracted; but so many years have passed that a suit will not succeed if the Pennsylvania statute is to prevail.

A. It is a general rule of law, and is the rule in Pennsylvania, that when an action is brought in one State or country upon a contract made in another, the statute of limitations which applies is that of the State in which the suit is brought, and not that of the State or country where the contract was made. The reason of the rule is that the statute operates merely upon the remedy, and forms no part of the original contract; and where a remedy is sought in any jurisdiction it must be pursued in accordance with the laws there prevailing. A debt contracted in Germany, where the statutory period is longer than that of Pennsylvania, cannot be sued upon in the latter State after the action is barred by the Pennsylvania statute of limitations.

10. In computing the time, at the expiration of which a debt becomes outlawed in New York State, if the debtor, a resident here at the time of contracting the debt, subsequently changes his residence to New Jersey, still continuing business here, does his being a non-resident of New York State change the time of the debt becoming outlawed?

A. The statute of limitations fixes the term of six years for an unsealed document or a matured debt in both New York State and New Jersey. If the debtor merely removed his home to New Jersey, but transacted business in New York State, the time would run the same as if he lived in the latter altogether.

11. 1. A promissory note is made to the order of J. B., for six months, payable at a certain bank; no protest was ever heard of. In how many years would it be outlawed?

2. Could a note like the above be indorsed by J. B. over to a third or innocent party in any manner so that it would never be outlawed and always be a good claim?

A. 1. Suit may be brought upon a promissory note at

any time, in many states, within six years from the day on which it is due, but the time varies in others. If the note is due six months after issue, then the six years begin to run, not from the date of the note, but from the due date; which is six months later than the date of issue. Formal protest is not required in the case of a promissory note. If any party who is only secondarily liable is to be held, however, he must have prompt notice of the fact that the maker of the note has failed to pay it. Neither protest nor notice is ever necessary in order to bind the person primarily liable as the maker of a note.

2. No form of indorsement or transfer can keep the note alive or affect the statute of limitations so that judgment can be taken against the maker in a suit brought more than six years, in a State where that is the limit, after the due date of the note.

STOCKS.

(See also Corporations.)

1. A stockholder buys, on account current for a client, some 2,000 mining shares on the New York curb market. The customer being called on for margin on these shares (owing to the impossibility of hypothecating them, they being unavailable as collateral) does not put up margin, but orders them transferred, against their approximate cost, to another brokerage firm. Is the stock broker entitled to a commission on these shares the same as if he had sold them?

A. It is a common practice of the best houses having representation on the curb to charge the regular commission as for a sale when a transfer is made in the way described by our correspondent. It is a charge which the broker sometimes waives, as he may waive any other right belonging to him; but if he insists upon making it he can point to a usage which is binding upon all who deal in that market, either in person or by agent.

2. Has a corporation not the lawful authority to rebuy their common stock at the actual value according to their books? The case in question is as follows: An old employe held a certificate, say for

twenty shares, and died. The widow wants to dispose of the stock, which has never been in the market, and will never be offered there. Is there any legal obstacle for the corporation to rebuy this stock, as stated, and transfer it to the treasury stock account for shares still undisposed of?

A. Some States expressly forbid corporations organized under their laws to buy and hold their own stocks, other States expressly allow it in certain cases, and in some there is no legislation at all upon the subject. Where there is no express provision of law to serve as a guide, the rule seems to be that a corporation may purchase its own stock, hold it temporarily and again sell it, provided the action be taken in good faith, and provided it can be, and is, taken without any resulting injury to creditors. The money so expended should come only out of the company's surplus or out of funds which might properly be divided among stockholders in the form of dividends. If the purchase can be made only by drawing upon the capital of the company the courts will not sanction it.

STOLEN PROPERTY.

1. A watch is stolen from A and pawned at a regularly licensed pawnbroker's store. Later it is sold at a pawnbroker's auction sale to B. If A should find his watch in B's possession, could B be compelled to return it to A without having had refunded to him the amount he paid for it at the auction sale?

A. If any piece of personal property is stolen, unless it be money or a negotiable instrument not due, the owner is entitled to take it wherever he may find it thereafter without paying anything for it. In the case our correspondent puts, A, the owner of the watch, may take it from B, who purchased it from the pawnbroker, if he can find the watch in B's possession. If he does not choose to wait for that he may maintain an action of conversion against the pawnbroker for having sold the watch in the first place. The license that a licensed pawnbroker holds is not a license to deal with another's property as if it were his own.

STOPPAGE IN TRANSITU.

(See also Sales.)

1. A sold to B a non-negotiable certificate, covering liquor in bond, on four months' time. Before said bill became due B was petitioned into bankruptcy. The power of withdrawal was never vested in B. Under these circumstances is it advisable for A to file his claim with the receiver and come in under the heading of a creditor, or can he not retain his merchandise?

A. The seller in this case is entitled to take advantage of the privilege known as the right of "stoppage in transitu." That is the right which a seller has of refusing to deliver the goods or of stopping them and taking them back into his own possession if they have been delivered into the hands of a carrier, in any case in which the sale was on credit and the buyer has become insolvent, or shown evidences of insolvency, since the sale was made. This right is an equitable extension of the seller's lien upon the goods for the purchase money, and it may be exercised at any time before the goods have actually been delivered to the buyer or his agent. There has been no such delivery in the case our correspondent puts, and the seller is entitled to refuse to perfect the buyer's title to the goods.

SUBSCRIPTIONS.

(See also Stocks and Corporations.)

1. A book agent of a large publishing house receives the signature of a customer as a subscriber to a certain work about to be published. The document signed requests the publishing company to put the subscriber's name down as such and states that the subscriber agrees to take the books as they are published at so much per volume. The next day the subscriber notifies the publishing company in writing that he wishes to withdraw his name as he does not want the books and signed the request to get rid of the agent as he was interfering with his business.

A. If any person gives a written order to a publishing house to supply him with one of its books, or agrees to accept and pay for such a book, he can be compelled to do so if the book is delivered in accordance with the order

or the contract. In the case our correspondent puts it appears that delivery of the volumes was to be made in instalments. If this is true the subscriber cannot be compelled to take all of them at once; but that point is of little value to him, because if the publisher does tender a delivery in accordance with the understanding the subscriber will be bound to pay for the books. Our correspondent states no ground upon which the subscriber can legally refuse to be bound by his written contract in this case.

SURETIES.

(See also Guaranty.)

1. The bond required by a certain State from sureties who guarantee the return to the State of State moneys deposited in banks, has no provision for cancellation or for expiration. If the State leaves the money on deposit indefinitely, are the sureties indefinitely bound?

A. When an indemnity bond is executed, and no time is named during which it is to remain in force, the courts hold that it is to be limited to a reasonable time. What may be a reasonable time differs in various cases according to the attendant facts and circumstances. It is to be noted, however, that the guarantor may put an end to his liability at any time by simply giving notice that he does not choose to be longer held upon his bond. Then the person or institution in whose favor the bond was made (the State of Pennsylvania in this case), may insist upon a new bond or remove the money to another bank. The only cases in which such a question arises as our correspondent has put are those in which such notice has never been given and an attempt is made to hold the guarantor for a default arising a considerable time after the bond was given.

2. On a certain individual, who is a customer of ours, we hold a guarantee given by a relative of his. This customer has now formed a partnership with another party. Does our guarantee cover debts contracted by the new concern?

A. The surety on a bond conditioned that the principal shall pay for all purchases made by him from the obligee is not liable for a purchase made from the latter by a firm

of which the principal was a member when the bond was given, or of which he has since become a member. One person's agreement to pay the debt of another is always construed very strictly in favor of the person so bound, and he is not to be held beyond the precise limits of his undertaking. If he agrees to pay for goods sold to an individual he is not bound for those sold to any firm; if he agrees to pay for goods sold to a firm, he is not bound for sales made to a firm differing, however slightly, from this one; that is, if one of a number of members retires, or if a new member is added to the firm, the bond will not cover sales made to it thereafter. A new bond specifically covering sales to the firm, should be executed in the case our correspondent puts.

3. A non-negotiable note for $100, payable thirty days after date, is given by S. to J. At the expiration of fifteen days J. becomes dissatisfied as to the value of the paper and complains to S. To make matters satisfactory S. gets B. to indorse this note.

A. If one person gives his note to another, without any surety upon it, but it is part of the agreement that a certain third person will afterwards put his name upon the note as surety, then that third person becomes bound as soon as he has so placed his name upon the paper. The promise that he would become surety for payment of the amount was part of the original consideration upon which the loan was made. We do not understand, however, that there was any such original agreement in this case, and if there was not the surety is not bound.

TARIFF.

(See also Duties and Customs.)

1. We understand the law in the matter of the valuation of any disputed article is to be obtained by comparison with those made in the same country. Is it at all possible to have a case reopened on the ground that our goods were compared with those made in another country?

A. Section 2,902 U. S. Revised Statutes provides that it shall be the duty of United States appraisers and of every

person who shall act as such appraiser, by all reasonable ways and means in his or their power to ascertain ,estimate and appraise the true and actual market value and wholesale price, any invoice or affidavit thereto to the contrary notwithstanding, of the merchandise at the time of exportation, and in the principal markets of the country whence the same has been imported into the United States. If it can be shown that the appraisers in the case under consideration have not proceeded in this manner there would seem to be good grounds on which to appeal to the collector for a new appraisement. If the collector wrongly refuses to order a reappraisement, however, the only remedy is an action against him for a breach of duty.

TAXES AND TAXATION.

1. An estate has been closed and all shares paid except a sum of money which by the terms of the will is to be held by the executor till the heir is thirty years of age, the income to be paid to the heir. The executor, as executor of the estate, has been taxed upon personal property by the city for a sum about one-third of that now held, and while the estate was unsettled the tax was paid and made a charge against the estate. When the tax is paid this year it will be a charge, I presume, against the income of the heir mentioned above, and, if so suppose the assessors increase the sum upon which personal tax is to be paid, is there any redress? Is the tax a charge against the heir's income and have the assessors a right to tax the entire sum?

A. If the assessors increase the basis upon which to estimate the taxes to be collected of an heir, there is no redress unless the amount finally fixed upon is greater than they are allowed to assess under the law. The tax is to be paid from the income of the property and not from the principal.

2. Please inform me if a foreigner, not being a property holder, is liable to a road tax.

A. Every person owning or occupying land in the town in which he or she resides, and every male inhabitant above the age of twenty-one years residing in the town where the assessment is made, may be assessed to work on the public

highway in such town. If he does not wish to work, he may settle by a payment of money.

3. An importer's stock of merchandise consists of unbroken packages worth for instance $6,000. His outstanding accounts, bills receivable, etc., amount to $7,000. Both assets together $13,000. His liabilities amount to $12,000, but were all incurred in the purchase of goods which he imported in original packages which are non-taxable. Deducting his liabilities from the above assets the real value of his property is $1,000. As the liabilities were incurred in purchasing non-taxable goods, am I prevented from deducting them from the assessment?

A. Ordinarily a taxpayer is allowed to deduct from his assessment of personal property the amount of his debts, upon the theory that he really owns only so much property as is left after payment of those debts. The law makes an exception, however, as our correspondent points out, of debts "contracted or incurred in the purchase of non-taxable property or securities"; these debts are not to be deducted.

4. A friend has by will set aside a sum of money to be deposited at his death in a trust company, the income of which is to be paid to his child. The trust company estimates the income to be 4 to 4½ per cent per annum. Is this fund subject to yearly taxation?

A. Funds held in trust are legally taxable in some States, at the same rate as other personal property, but this is an obligation which there is no tendency to enforce; but we do know of cases in which trust companies have been called upon to pay taxes upon the funds in their custody.

5. A resided in Brooklyn. A personal tax of $1,000 was imposed upon him for that year, which was paid by check. A then moved to a Western city, taking his personal property with him. He did not stay in the West, but moved to New York again, when he was met with a summons of arrears of taxes for delinquency. Can a tax be collected on personal property under the above circumstances?

A. When a citizen of one State moves to another State, intending to make his residence there permanently, he ceases to be liable for personal taxes in the first one; this is true even though he may afterwards change his mind and return to his former State to live.

6. Is money on deposit in a savings bank subject to a personal tax?

A. It is now well settled that there is no taxation of savings bank depositors, either upon the sum originally paid into the bank or upon interest since accrued.

7. Please advise me whether railroad stocks are taxed as personal property, and also if it makes any difference whether the railroad is in another State.

A. Railroad stocks are not assessed as personal property liable to taxation in the hands of individuals. If the roads are in one State their property is taxed, like other property of the same kind, and a tax on everything belonging to the road is paid, or ought to be paid, by the corporation itself in that State. If the road lies outside the State it is assumed to be taxed to its full value there, and it is held to be inequitable to ask the individual stockholder to pay a second tax here on his part of the same property.

8. The question has been raised as to whether we are subject to taxation by any State, county or municipality, upon original packages of goods imported into the country upon which duty has been paid.

A. No State, county or municipality can collect a tax on imported goods so long as they remain the property of the importer and are left in the original package. Such goods are taxable locally only when they have ceased to be distinctively imports and have become part of the property of this country; the courts have frequently held that this point is reached when the original importer has sold the goods in the original package, or when he has broken up the original package so that the exact form of importation is no longer preserved.

9. What kinds of personal property are taxed and what exemptions are there, if any? Are shares in a corporation and corporate bonds taxable?

A. Practically all kinds of personal property are taxable. The statute defines personal property, for purposes of taxation, as including "chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for

the payment of money due or owing to persons residing within the State, however secured or wherever such securities shall be held; debts due by inhabitants of the State to persons not residing within the United States for the purchase of any real estate; public stocks, stocks in moneyed corporations, and such portion of the capital of incorporated companies liable to taxation on their capital as shall not be invested in real estate." The most important exemptions are these: All property exempt from execution for debt, pension moneys, United States bonds, most bonds issued by the city or State, imported goods in the hands of the original importer and in unbroken packages, and deposits in savings banks. The taxpayer is entitled to deduct all the debts owing by him from the value of his personal property in order to find the value of that part which is taxable. Shares of stock in corporations, other than banks and moneyed corporations generally, are not taxable. The corporation itself pays a tax on all its property, real and personal, and its shares in the hands of individuals are exempt. Bank stock is taxable, but an arrangement is made by which the bank may pay the whole of it and then deduct from each owner's dividends his just proportion.

10. Is capital or money invested in the export trade in this city exempt from taxation?

A. Capital employed in export trade is liable to taxation. The goods themselves are liable to taxation if the levy is made before they have actually been put in course of exportation.

11. What laws govern the assessment of real estate and personal property?

A. The assessors' duties are, briefly, to set down according to the best information in their power the names of all taxable inhabitants in their town or ward, the quantity of land to be taxed to each person, the full value of such land and the full value of all taxable personal property owned by such person after deducting the just debts owing by him. All real and personal estate liable to taxation shall be estimated and assessed by the assessors at its full and

true value, as they would appraise the same in payment of a just debt due from a solvent debtor.

12. Where a church corporation own a parsonage and lot adjoining the church building and occupied by the minister of the church as part of his salary, would the parsonage and the lot it occupies be still exempt from tax if the minister should let a portion of the parsonage, the rental going toward the support of the church?

A. The statutes of some States provide that the "exemption from taxation of every building for public worship shall not apply to such buildings unless the same be exclusively used for such purposes," but the law varies in different States.

13. I sold a house and lot and gave full covenant deed therefor. Who should pay the taxes thereon, the buyer or the seller?

A. In all covenants of sale executed before the year's assessments for taxes are confirmed the seller is bound only for any previous liens. But if executed after the confirmation the seller is bound also for the tax for the current year.

14. We lease government property and pay ground rent for said property, and still the assessor taxes the improvement (a building) we have placed on this leased ground and it is now expected that we should pay tax besides paying ground rent. Can they legally compel us to pay such tax besides paying ground rent? If we refuse paying taxes can it sell our improvements?

A. Unless the city covenanted in the lease not to tax the improvements placed upon the leased lands, the courts hold it is competent for the city to levy such a tax and to sell the improvements if it is not paid.

15. In this place it is understood that the assessment for town, county and State taxes shall be concluded by the first of August of each year. Who by law should pay the tax for that year on realty sold after August 1, in case a sale is made?

A. When a vendor of real estate undertakes to give a title clear of all liens and incumbrances he must pay such taxes, and only such, as have been fully confirmed, are due and payable, and have become a lien upon the property when the deed is made. The mere assessment of the prop-

erty is not all that is required for this purpose; the original assessment is liable to review and correction, and the assessment of any particular parcel may be set aside altogether.

TENDERS.

(See also Sales.)

1. When a proper tender of moneys is made on a debt, and this is refused and the check returned to the sender through a misinterpretation of sales by the creditor, although the check tendered is for the correct amount according to the facts, does the money, according to law, revert to and become the property of the sender?

A. A check is not a form of legal tender and no creditor is bound to accept it, whether it is for the correct amount or not; a creditor who returns his debtor's check for the amount of the debt is, accordingly, in the same position he has occupied from the beginning. If the exact amount of the debt is tendered in the form of legal tender money, and the creditor refuses to accept it, the money still belongs to the debtor. His debt is not paid, however, and it is still due and enforceable against him.

TRADE-MARKS.

1. What legal objection is there, if any, to the use of the word "trade-mark" by a manufacturer in connection with a device used upon his goods when said device has never been registered as a trade-mark?

A. The word "trade-mark" may be used without registering, and such use does not prevent nor invalidate a subsequent registration. A trade-mark is not in this respect like a copyright or a patent right. No one has an exclusive right to publish his own works or to manufacture machines of his own invention, except as he gets this right from certain acts of Congress; and all persons are forbidden by law to claim either of these rights unless they have secured them in the way pointed out by the law. But the exclusive right to use a trade-mark does not depend upon any legislative act. It is secured simply by using the mark before anyone

else uses it upon the same kind of goods. Registering the trade-mark serves merely as a notice of claim of ownership, and as a convenient proof of title, which becomes conclusive only if there is not stronger proof upon the other side.

2. Please advise us whether there is any legal objection to the reproduction of a lithograph from a circular card which is not marked "registered" or "trade mark"?

A. If a picture is not copyrighted as a work of art, but is used merely as a trade-mark in connection with goods of a certain kind, there is no legal objection to another person's use of the same trade-mark upon goods of a totally different kind. The only legitimate interest which the owner of a trade-mark has in it is that it shall always be known as distinguishing his goods from others of a like kind.

3. We have a brand of goods which we have had on the market for upwards of fifteen years and have spent a great deal of money advertising it, and it is a very valuable brand to us. One of our competitors has recently registered the same brand, but placed his name before it. Does this give him the right to use this brand?

A. The person who first uses any particular trade-mark in connection with goods of a given kind has exclusive right to continue the use of it, and he may prevent all other persons from using the same mark on the same kind of goods, or from using any mark which the ordinary buyer would be likely to mistake for that belonging to the first user. Our correspondent's competitor, in the present case, has gained no actual right by registering the trade-mark in connection with his name. The real question is just what it was before: Who was first to use the mark in connection with goods of this kind? He who can prove that this priority of use lies with him may have his right of exclusive use confirmed by the courts.

4. Please let us know how to go about getting a trade mark copyrighted. What official at Washington has charge of the matter and what is the expense?

A. A trade-mark cannot be copyrighted at all; but under the new law the owner of a trade-mark may obtain registration "by complying with the following require-

ments: First, by filing in the Patent Office an application therefor, in writing, addressed to the Commissioner of Patents, signed by the applicant, specifying his name, domicile, location and citizenship; the class of merchandise and the particular description of goods comprised in such class to which the trade mark is appropriated; a description of the trade mark itself, and a statement of the mode in which the same is applied and affixed to the goods, and the length of time during which the trade mark has been used. With this statement shall be filed a drawing of the trade mark, signed by the applicant, or his attorney, and such number of specimens of the trade mark, as actually used, as may be required by the Commissioner of Patents. Second, by paying into the Treasury of the United States the sum of $10, and otherwise complying with the requirements of this Act and such regulations as may be prescribed by the Commissioner of Patents, etc., etc."

5. A certain manufacturer uses the word "Ideal" as a trade-mark to designate his goods. It is claimed that anybody can use this same word in manufacturing the same class of goods, as the word itself is not distinctive, and that similar words like "standard," "reliable," etc., cannot be registered. What is the law governing this question?

A. In choosing a word to serve as the name of a new article and part of a trade-mark, care should be taken to select a word which is not descriptive of the character, quality, material or grade of the article in question. As a rule, the more fanciful the name may be the more suitable it is to serve as part of a trade-mark. Such words as "pure," "all-wool," "A No. 1" and the like are to be avoided because they are descriptive words which no manufacturer or dealer can be prevented from using in a case in which they express the truth. As to that particular word proposed by our correspondent, "ideal," the court has passed upon it and the propriety of its use as a trade-mark is no longer in doubt.

6. 1. Will I become liable if I prepare and sell a certain medicine of a somewhat similar basis, but of superior quality to one now being manufactured and sold by a New Jersey firm?

2. Where must application be made to have a trade-mark and title copyrighted?

A. 1. Whether or not the person producing and selling the remedy described by our correspondent would render himself liable for damages to the New Jersey concern depends upon the degree of protection which the latter may have secured under the law and also upon the closeness of the resemblance between the two products.

2. Neither a trade-mark nor a title can be copyrighted. Both may be registered in the Patent Office, and this registration will furnish convenient evidence of ownership and exclusive right to use in any case in which such evidence may be needed.

7. What protection is there to a trade name used by a firm?

A. A distinctive trade-mark is entitled to the same protection that a trade-name may claim, and for the same reason. The owner of a trade name may prevent others from using, not only the same name, but any other which is so similar to the one he has adopted that the ordinary citizen will be likely to be deceived.

8. 1. A and B enter into an agreement to go into business. They establish brands, say A and B brand, which are not copyrighted. Can either withdraw and continue the use of the brand for his individual profit?

2. In case of the death of either what recourse have the heirs of the deceased?

A. 1. When a partnership is formed for no definite term it is a partnership at will. Either partner may withdraw at any time, and so cause a dissolution of the firm. Such labels, brands or trade-marks as the firm has owned may be purchased by either partner, or sold to some other individual or firm.

2. If one partner dies, the personal representatives of the deceased cannot be compelled either to establish a similar business in which to use the labels, brands or trade-marks or to lose their interest in them.

TRUSTS.

1. A father leaves a life interest in an estate to his son. The will reads that the executors pay to his son each year the interest accruing from the investment of his share of the estate. This interest will amount to a sum only sufficient for support of son's family. Now, as the son is insolvent, can his creditors attach this interest?

A. It is held that where a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, shall be liable, in equity, to the claims of the creditors of such person, in the same manner as other personal property, which cannot be reached by an execution at law.

2. A mother has money on deposit in a savings bank, in trust for her three children, one of whom, a daughter, is married and has children. If this daughter should die before her mother, upon the latter's death would this money go to the daughter's children, or husband, or to her two brothers?

A. If a mother deposits money in a savings bank in trust for a son or daughter, and allows it to remain there, this is considered in law a gift of the money from the mother to the child, and the money belongs to the child as any other gift does. If the child dies intestate this money goes, like any other personal property left by the deceased, to the nearest relatives of the deceased, not to the relatives of some one who formerly owned the property.

3. If a mother deposits money in a savings bank, in trust for her three children, payable to them upon her death, what steps must the children take to secure possession of this money when she dies?

A. If this is an ordinary trust, not hampered by any unusual conditions, the children can most easily come into possession of the deposit, after the death of their mother, by filing a certificate of the death and then establishing their own identity as the beneficiaries of the trust.

4. Do the laws permit a trust to continue only through the lives of two persons living at the time the trust was created?

A. At common law it has been regarded as intolerable except in case of a trust for religious, charitable or other similar purposes, that any property, real or personal, should be so held indefinitely that it could not be sold, even though the best interests of all the beneficiaries demanded a sale. Accordingly, there is a common law rule against perpetuities, or an indefinite suspension of the power of alienation, which is in force in those States in which it has not been replaced by statute.

5. A husband has deposited in bank in trust for his wife the sum of $500. The husband has become insane and is now in a hospital for insane. Can the wife draw any of that money, as she is entirely without means, and has a son about eight years old?

A. 1. If a man deposits money in a savings bank, and trust for her depends largely upon the nature and form of the trust; the money may have been placed in trust, for example, with directions that it be kept intact until a certain fixed date, or the happening of some event. This much however, is certain: that a trust will not be allowed to fail by reason of the incapacity or lack of a trustee. If the trustee appointed is unable to act, and the money cannot be drawn by the beneficiary in person, she has simply to go into court, make these facts known, and apply for the appointment of a new trustee.

6. 1. I have opened a savings bank account in my name, but in trust for my wife. We have three children, all minors. Am I not at all times the true owner of such deposits, even though at my wife's death?

2. Are such accounts attachable in case of my failure in business?

A. 1. If a man deposits money in a savings bank, and takes out a passbook indorsed with his own name "in trust" for his wife, this amounts in law to a gift of the money to his wife. Such an act creates an irrevocable trust and vests in the wife the beneficial interest in the deposit, without any further action upon the part of anyone. Upon the death of the wife the trust will terminate and title to the

deposit will pass under her will, or, if she die intestate, will descend to the same persons who succeed to her other personal property.

2. Creditors of the husband cannot attach the money because it does not belong to him. The creditors are entitled to show, if they can, that the deposit in trust was a mere colorable transaction, made, not in good faith.

7. What is the rule as to bearing the expense of a trust estate and how paid?

A. The general rule is that the income of a trust estate must bear all the ordinary expense of the care and management of the estate. It is necessary sometimes to incur very heavy and unusual expenses, to the payment of which the principal fund may be made to contribute. But such expenditures as those for taxes and the cost of examining title should be made a charge upon the income.

8. 1. Please describe the securities in which a trustee is expected to invest moneys.

2. If the trust fund is turned over to him in the form of certain stocks and bonds is it always safe for him to allow it to remain so invested?

A. 1. If the will or other document under which a trustee is acting gives any explicit directions as to the investment of funds, these directions may safely be followed. But in the absence of such instructions a trustee should invest in United States or State securities, in first mortgages upon real estate, or in the bonds or stocks of any of the State cities issued pursuant to the authority of any law of the State.

2. When a fund is turned over to trustees they alone become responsible for its future safety; they cannot allege in defense of their own action or inaction any exercise of judgment on the part of the former owner of the fund. They are, of course, entitled to a reasonable time in which to change the form of the investment, but when such reasonable time has elapsed they must have all the money invested

in such form as will appear to the court as being safe and judicious.

9. 1. Can a man put a portion of his property into a trust for the benefit of his minor children, either into the hands of a trust company or an individual?

2. Provided the act was legal and concluded, would it be irrevocable, or could the man get possession of his own again?

3. If one or more or all of his children died before they came into possession could that contingency be provided for?

A. 1. A man may place as much as a third or a half of his estate in trust for his children. His wife has no valid cause of complaint so long as enough property is left to satisfy her claim for dower. The trustee may be either an individual or a trust company.

2. When a man places his own property in trust he may attach any condition to the trust that suits him. Inasmuch as he is not obliged to turn the property over to another at all, he may make his own conditions if he does turn it over. He may provide for a revocation of the trust at any time and upon any conditions; but if he does not affix any conditions the trust will be irrevocable.

3. A trust deed may provide, and usually does provide, what disposition shall be made of the property, or any part of it, in case the original beneficiary should die before the trust becomes effective.

10. I open an account in a trust company savings department for a minor, thus " F. B. D., trustee for D. G.," the funds belonging to D. G. If I should die how can I arrange so D. G. or his parents can get the funds readily?

A. It is a rule of law that a trust must not be allowed to fail for lack of a trustee; if the selected trustee dies another will be appointed, if necessary, to carry out the terms of the trust. Our correspondent may rely upon this principle, in the present case, or he may expressly provide, as one of the terms of the trust, what disposition is to be made of the fund in case of his death before the beneficiary reaches his majority. If the fund were deposited in a savings bank its disposition would be governed.

TRUSTEES.

(See also Wills.)

1. Please inform me whether persons appointed by will as both executors and trustees are entitled to double fees the same as if there were different persons appointed for each office?

A. If the functions and duties of executor and trustee are not separable, but are blended; if they are co-existent and expire at the same time, the person filling the two positions is entitled to only one commission. But where the will contemplates a time when the duties of an executor as such shall cease, after which he shall assume the character exclusively of a trustee, an allowance to him as executor does not prevent his receiving a like amount upon a subsequent accounting as trustee.

2. J's wife has her life insured, the amount of the insurance to go to the benefit of her children at her death, with J as trustee. She dies, and J receives the money; upon her heirs becoming of age—five years later—they demand a settlement of J and he denies ever receiving the money, but it can be very easily proven that he did receive the money. What can be done?

A. If it can be proven that J received the money as trustee for the heirs, he is, of course, liable for it. But the claim of the heirs cannot be made to take precedence, as a lien upon J's real estate, of a mortgage which is now upon it. If J had bondsmen and the condition of the bond is broken, they also are liable. If either J or his bondsmen has any property which the courts can reach, the heirs may recover from that, otherwise they will be compelled to bear the loss.

3. A man dies leaving his estate to three executors and trustees. One of these takes entire charge of the securities, collects all dividends and pays out to the different parties interested, advising of course with the other trustees when any change of investment is made. Is this person a trustee in fact and with same powers and obligations as the other two who act advisory only, none of the three making any charge for services?

A. The person described by our correspondent is not a trustee in fact; but being entrusted with the management

and control of the estate by those who are trustees, he becomes their agent, and they are responsible for his conduct and liable for any losses occasioned by his improper or negligent management. Those of the beneficiaries who were competent to consent, and who did consent to his acting as a trustee, will be stopped from disputing the validity of his acts, or from holding any one else responsible for losses arising from them.

USURY.

(See also Interest.)

1. John Jones, a trader of small means, requests me to discount a note of John Brown, an equally small trader, and I do it for 9 per cent, which is even 3 per cent less than he is willing or expects to pay. Is this wrong?

A. It is perfectly equitable to charge for the loan or forbearance of money its fair market rate, even if that is 1 per cent. a day. In the case above described Jones is really benefited and the action of our correspondent is so far from being questionable that it is certainly commendable.

U. S. POSTAL.

(See also Mail.)

1. Is it lawful to pass through the mails an envelope with the following printed on the outside: "Business Men's Protective Collecting Agency"?

A. A law signed by the President declares all matter unmailable which is enclosed in an envelope bearing any language reflecting injuriously upon the character or conduct of any one. Postmasters have been instructed by the postmaster-general that this law excludes from the mail any envelope on the cover of which appears anything plainly calculated and intended to injure the feelings or reputation of the person addressed, or to bring him into discredit. All inscriptions in the nature of offensive or threatening duns, or conveying the suggestion that such a dun is enclosed, are especially prohibited.

WAREHOUSEMEN.

(See also Liens.)

1. If a person moving away from a house leaves a piano in the care of a person moving into the same house, and said piano has been held for the first person two years, can the piano be sold or must it be stored and held for a longer time for the owner?

A. If a person who is not a warehouseman agrees to allow a piano belonging to another to remain in his private house, and there is no express agreement that storage shall be paid, the courts will not raise an implied agreement to that effect; it will be supposed, on the contrary, that the piano was to be kept merely as an accommodation to the owner. The person who has so kept it would have no right to sell it in any event except as a means of collecting unpaid storage.

2. A lot of cheese in a cold storage warehouse was badly damaged by water which appeared to be leaking through the ceiling. The regular receipt of the storage company reads, "Goods at owner's risk," and also "not liable for damage by water." Who stands the loss?

A. It is well settled that a warehouseman or any other custodian of goods cannot exempt himself from liability for negligence except by a clause in the contract expressly naming a loss by negligence as one of those for which he is not to be liable; a loss by negligence will not be understood as included under any general terms. The burden is upon the owner of the goods in such a case as our correspondent puts to show that negligence is responsible for the damage. If he can show this he can hold the warehouseman notwithstanding such general terms in the contract as that the goods are "at the owner's risk," or that the warehouseman is "not liable for damage by water."

3. A sail ship brought for me 103 barrels of merchandise that I ordered in storage at the warehouse near landing dock of the ship, giving the warehouse a written order to receive 103 barrels. Upon withdrawing I find two barrels short, and looking over the warehouse receipt find it only for 101 barrels. Who is responsible for the two barrels?

A. A bailee cannot be held responsible for a greater quantity of merchandise than has been placed in his care. The warehouse receipt acknowledging delivery to the warehouseman of 101 barrels, was sufficient notice to the owner — that 103 barrels had not been received. Our correspondent has a valid claim against the person through whose fault the missing merchandise was lost, but the burden is upon him to show who that person is.

4. A stores 1,000 barrels of merchandise at a certain rate per barrel in B's warehouse. About six months after that time the warehouseman sends a notice that on and after a certain date, say a week's time, the rate will be advanced. Can a warehouse raise the rates of storage on goods remaining in the warehouse on which a rate has been made at the time of storing?

A. Where no contract is made for any given length of time, the owner of a warehouse may give notice to the owner of goods stored therein that on and after a given date the price will be raised, and this will be a legal charge from the time mentioned. The owner of the goods must either consent to the advance or remove his property. Of course this would inconvenience the customers, and might be very unfair toward them.

5. Is it customary for warehousemen to charge storage on goods stored with them from the date that vessels having the goods on board arrive at the wharf?

A. The storage can be legally charged only from the date the goods go under general order, if it is a bonded warehouse, or, if not, then from and after the time when the vessel had discharged them and the consignee had the option to remove them.

6. A storehouse advertises that it "will close at 12 o'clock on Saturdays." A truckman calls there at 11:50 o'clock with an order for goods, but is informed by the storehouse people that they cannot deliver the goods until the following Monday, as there are three or four trucks already waiting, and that therefore a delivery could not be made to the last arrival until after 12 o'clock. Please tell us whether the storehouse people are right in thus refusing to deliver

goods when the order is presented by the truckman before the "closing time."

A. There is no statute on the subject of our correspondent's inquiry. The usual custom, and the only one that would be at all practicable in many cases, is to close the warehouse with reasonable promptness after the closing hour arrives whether there are trucks then waiting in line or not.

7. Are we compelled to remove 200 or 300 bales of merchandise from a public warehouse because we are in dispute about some damage to such goods with the warehousemen?

A. When goods are placed in a warehouse the owner of the goods has all the rights secured to him by his contract with the warehouseman, and no others, whether a dispute arises or not. If the contract names a period during which the goods are to remain, or may remain, in the warehouse the owner cannot be compelled to remove them until that period has expired; when it has expired he may be called upon to remove the goods; if he fails or refuses to do so the warehouseman himself may remove them and put them in any other well managed warehouse.

8. Please inform a warehouseman the best course to pursue when he has on storage 1,000 barrels of merchandise, taken at a low rate per barrel per month (without any contract as to time other than so much per month), and the owners of said merchandise refuse to pay anything for the storage on the ground that they will not pay until the goods are delivered.

A. A warehouseman has a lien for his storage charges, for moneys advanced by him for cartage, labor, weighing and coopering paid on the goods deposited and stored with him, and such lien extends to and includes all legal demands for storage and the above described expenses paid, which he may have against the owner of said goods, and it is lawful for him to detain said goods until the lien is paid. The owner of the goods, therefore, is not entitled to demand delivery except upon payment of these charges.

9. A sells to B one hundred tierces of lard and gives the purchaser a transferable order according to the form of the New York Produce

Exchange. B transfers the same to C and C to D. Now it is claimed by dealers that the warehousemen with whom the lard may be stored is bound (in the absence of any other delivery order) before he delivers the lard to the last named to ascertain if he, D, has paid A for the same, and that a failure on his part so to ascertain before delivery, makes the warehousemen responsible to A for the value of the lard if he delivers it and it has not been paid for.

A. The duty of the warehouseman is to deliver the lard stored with him upon the return of the warehouse receipt properly indorsed. The transferable order does not affect his liabilities, nor concern him in any way. It is an instrument used by members of the lard trade in their dealings with each other solely for their own convenience.

10. A firm placed some goods in warehouse on storage and forgot them. They remained in warehouse for over two years without any notice from warehouse until dissolution of warehouse firm, when they sent bill for storage to date of dissolution. Can the warehouse firm claim storage on goods?

A. The warehouseman can collect full storage charges on the goods, and if the property will not sell for enough to settle the bill, can recover the difference from the owner who left them on storage, and then forgot them.

11. 1. Warehousemen receive goods in store for any one offering and issue negotiable receipts. Suppose the person did not own the goods, or actually stole them, can innocent party making advances on receipt hold the goods?

2. Warehousemen issue negotiable receipts for cement and wool, which they appear to be. A bank advances money on receipts, and the goods turned out to be dirt and shavings; is the warehousemen liable?

A. 1. It has been frequently held that where warehouse receipts are issued to one who has stolen the goods stored, a purchaser of the goods in good faith from the thief acquires no title thereto by the transfer of the receipt to him.

2. It has been decided that a warehouseman who issues negotiable receipts upon goods in his possession is liable to any one who suffers a loss by reason of the fact that the goods are not what the receipts describe them to be.

WARRANTY.

(See also Sales.)

1. We are purchasers of merchandise guaranteed by the seller to be sound and to remain in that condition for a period of six months from the date of invoice. Prior to the expiration of the said six months and while under the care of the seller the stock is damaged by water caused by an overflowing tide. Can he through any technicality avoid reimbursing us for a fair appraisal of the damage?

A. The only ground which occurs to us as likely to furnish a means of escape for the seller in this case is some strict construction of the terms of his warranty. The precise wording of such an agreement is always important. It is possible that the wording of that under consideration may be such that the seller is to be bound only in case the damage arises through some negligence on his part or through some inherent defect in the goods themselves. If the terms of his warranty are broad enough to include a case of this kind there is no doubt that he can be held. It was once thought, and even decided by some courts, that a warranty, in order to be valid in law, must refer to some past or existing fact.

2. 1. Where a manufacturer accepts an order for a certain kind of wire and delivers a different kind, although the tags on the coils show what the wire delivered really is, can the buyer hold the seller responsible for any expense caused through the wrong kind of wire being installed?

2. Where a party buys a cable and installs it—say in an underground conduit—and after getting it there tests it and finds a defect, can the buyer hold the seller responsible for the costs of installation, provided the cable was so wound on a reel that tests could have been made before installation?

A. 1. The rule enforced by the courts in such cases as this is that loss and waste are to be made as small as possible, no matter who is to bear them finally. Anyone who causes unnecessary loss or waste must take upon himself at least so much of it as he might easily have prevented. If the tags on wire show that the wire will be unsuitable for a given use the person receiving the wire cannot install it for

such use and then hold the manufacturer liable for the cost of installation.

2. If wire is wound so that a satisfactory test may easily be made without going to the expense of installing the wire, a buyer is ordinarily bound to make the test in that way. But here again, if the seller has expressly warranted the wire to be suitable, or if he has furnished it with a knowledge of the use to which it is to be put, and if the buyer does not know that it is unsuitable, he is not bound to make any test at all.

3. Has a buyer a legal right to return a floor covering (linoleum) after he has cut it up and laid it down in the house of a customer, on the plea that the quality is not satisfactory, four months after he received the goods, and one month after he paid for them without having made a complaint?

A. If a buyer of linoleum secures from the seller an express warranty of quality, and the linoleum turns out to be of inferior quality, the buyer may accept the goods and use them, and still compel the seller to pay damages under the express warranty. The seller, in that case, is not bound to take the goods back, but he must either do that or pay such damages as the buyer can show himself to have sustained. If there is no express warranty the buyer can not, in any case, complain, after the acceptance of the goods, on account of any defect which he might have discovered by a careful and thorough inspection. He has a right to make such inspection, and if he does not make it, or if he allows any defect to escape him which a more careful inspection would have revealed, he is bound by his acceptance of the goods.

4. We placed an order with a commission house for a quantity of sheeting for immediate delivery. The memorandum of sale calls for goods of first quality, to be of a certain width, count and weight. Goods were shipped to the bleachery and found to be not only inferior in quality but narrow in width and of much lower count and weight than the sales memorandum called for. We reported the matter to the house, and they asked us to accept the goods, offering to make proper allowance in price. We advised them that we could not use the goods at any price; but through a misunderstanding the goods were

put in process by the bleachery. Now the commission house takes the position that they are not responsible and demand pay at the contract price because they have been converted; they refuse even to make the allowance they proposed at first. May we not demand delivery of the quality we bought? How do we stand with seller as to goods inadvertently put in process?

A. The sellers are bound to make good the loss in this case. They are bound both under the implied warranty existing as a contract collateral to the contract of sale, and also because, when the buyers had justifiably refused to accept the goods, the sellers, in consideration of their agreeing to accept them, stipulated, on their part, that they would make the loss good.

5. A buys from B through C, their regularly appointed agent, a new line of goods, which C tells A will be sold by their salesmen in the usual introductory way. Before C's salesmen start to sell, B and C quarrel and C's agency is taken away. B's agent calls on A and exchanges goods, but they fail to sell. Later another of B's agents calls on A with another new line of goods, and after a good deal of talk takes back the first line for which B sends a credit voucher to A. In consideration of this A buys from B some of the newer line, "sale guaranteed," which is expressed in writing on the memorandum of sale. Can A force B to take back these goods which are not salable and pay the amount of the credit voucher?

A. We understand the endorsement "sale guaranteed" which was made upon the memorandum of sale in this case to amount to a warranty upon the part of the seller that the goods to be furnished were salable and that, with reasonable efforts on the part of the buyer, they could be disposed of. This is a warranty which is binding upon the seller and which will survive acceptance of the goods by the buyer. If the latter can show that a sale of the goods is not practicable, in spite of his reasonable efforts in that direction, he will be entitled to recover the amount paid for the goods upon an offer to return them. As the transaction in the present case involved an issue of credit vouchers for goods previously bought, the seller can be compelled to redeem these vouchers as part of the consideration of the outstanding contract.

WEIGHTS AND MEASURES.

1. I am shipping a case of wine, gross weight 150 pounds, weight of empty case 30 pounds, the empty bottles weigh 50 pounds, and the wine weighs 70 pounds. What is the legal weight of the wine?

A. The actual weight of the wine, in the case our correspondent puts, is, by his own calculation, 70 pounds. The actual weight is also the legal weight unless the law in question contains some provision to the contrary. But it is not possible to say conclusively what is to be taken into consideration in finding legal weight unless we know the purpose for which this weight is to be ascertained and the provisions of the law in question.

2. If 1,600 pound test weights are weighed, the beam (if correct) will stand horizontally and so remain. Now in making weight on goods it seems to be customary to allow the beam to rise, before calling it weight, and should the beam stand, to throw off a notch from one to four pounds, as the beam may be cut. So in a case of 1,600 pounds, to call it 1,596 pounds, because the beam does not rise above center on 1,600 pounds. Is this right, and where did custom originate?

A. The custom of giving "down weight," as it used to be called, is as old as the use of balances, and can be traced back for nearly four thousand years. It is not quite the equivalent of what a very ancient book describes as "good measure, pressed down and shaken together and running over," but it is a liberal concession to the buyer. To pass as weight in law, the quantity must be full weight by expert testimony, and if the custom is to give down weight, a horizontal beam would not meet the requirement.

3. Are there authorized inspectors of weights and measures in various cities? If there are do they have a legal right to collect fees?

A. There are inspectors of weights and measures in different cities, some of whom are authorized to collect fees, while others receive a salary.

WILLS.

(See also Estates and Executors.)

1. A died some time since and bequeathed his property to his nephews and nieces. A provision of the will, however, gives the use of interest derived from the estate to his sister so long as she lives. None of the estate, which consists principally of personal property, goes to the said nephews and nieces during the lifetime of the sister. Can the executors be made to pay the State taxes or any part thereof, under the law of inheritance, while the sister is living?

A. The value of the life estate should be fixed by the Judge and deducted from the appraised value of the whole property, the tax to be immediately due on the remainder. If not paid the interest will run at a huge rate until the estate is finally distributed.

2. A, B and C are brothers. To them is left property for which A and B are acting executors. The will states that the property cannot be divided among them until C has attained his majority. But in the meantime B is desirous of selling his share of the property to A, after a fair valuation of the same has been arrived at. A is willing to buy B's share and C is quite agreeable to B's disposition of his (B's) share. Now, A and B being executors, is there any law to prevent A buying from B?

A. The fact that A and B are executors and bound to protect the interest of the minor heir would prevent their buying any portion of that interest. But B is owner of a vested interest in the estate in his own right, and that he may sell it to A. So far as we know, there is no law in any State which would render such a transaction illegal.

3. If a widower with only two children, son and daughter, just prior to his death, transfers all his personal estate to the son without the knowledge of his daughter, can such a transfer be legal?

A. If the father is of sound mind he has a perfect legal right to make such disposition of his estate.

4. My father, who died about three years ago, made a will leaving everything to his wife (my mother). Now I have been told that the will must be probated. As no one disputes my mother's right to the property is it necessary to have the will probated and how are we to go about it?

A. It is very important that the will should be probated, as without it the wife has no legal title to the fee of the real estate, or to more than one-third of the personal property. Application should be made to the Judge, who will issue the citations and appoint a day for proving the document. One or both the attesting witnesses should be on hand to prove the execution of the will.

5. Please give the form of drawing a will that will answer the law, or that is commonly used.

A. The form of a will is not as important as the substance. The usual form is the following:

I, John Smith, of the town of Smithville, State of —, now being of sound mind and memory, do make, publish and declare this my last will and testament:

I give, devise and bequeath to, &c., &c.

In witness whereof I have hereunto subscribed my name and affixed my seal this — day of — in the year of our Lord one thousand nine hundred and —. John Smith. (Seal.)

Signed, sealed, published and declared as and for his last will and testament by the testator in our presence, who, in his presence and at his request, and in the presence of one another have hereto subscribed our names as witnesses:

James Brown, 32 Wall Street, Smithville.
Peter Robinson, 17 Elm Street, Smithville.

The seal may be omitted, and if the instrument is not signed in the presence of the witnesses then the maker must acknowledge his signature in their presence, and the latter form be changed to correspond. He should openly proclaim it to be his last will and testament and ask the witnesses to sign it as such.

6. Is there any law which says that any heir, upon the signing of a release, may receive one-half his or her portion of an estate, and which said estate is not to be distributed until one of the heir's children shall become of the age of twenty-one?

A. There is no statute under which any heir or beneficiary can claim half or any part of the amount left him

by the will at a date earlier than that fixed in the will itself. He may, however, sell his interest, or part of it, for cash, and then deliver it to the purchaser whenever the will allows him full control over it.

7. 1. Can a will made in regular form but without "date or month" be contested? The will was made: "—— October, 19—.' 2. Has an illegitimate child, of age, any rights in the estate of her father, the latter having died, not leaving any other children, but leaving his property, both real and personal, to his legitimate wife?

A. 1. A will is valid, though it do not name the day of the month on which it was executed, if it is in due form in all other respects. If it ever becomes important to establish the precise date of execution this may be done by any parol evidence available.

2. If a decedent have made a will leaving all of his property to his widow, none of his children, legitimate or otherwise, can claim any part of it. Even if he dies intestate his illegitimate children are not entitled to share in the distribution of his estate.

8. I have two cousins, children of my father's brother. My father, my mother, my sisters and brothers are all dead. Can I leave my property to a friend and cut off my cousins?

A. A man is under no legal obligation whatever to leave any of his property to his cousins, but may make a will in favor of his friend.

9. What disposition is to be made of house and keeping after decease of owner, nothing being said about same in will? Has not the same to be maintained for some time and expense to be paid by estate when there is a minor in the family? Also, have executors got any special time in which to dispose of property, will reading: "I will and direct that my executors hereafter named dispose of all my real estate in such manner as they may see fit, converting the same into cash as soon after my decease as conveniently may be in their judgment most advisable"?

A. If deceased left a widow she is entitled to her quarantine, that is, to possession of the house and belongings a certain time after the death of the testator. There being no specific disposition of the house, it becomes a part of

the general estate at the end of the allowed time and must be so disposed of under the will. Where the will leaves real estate to be disposed of at the discretion of the executor, as in this case, he is to deal with it as a business man of ordinary judgment would deal with his own property. There is no other rule upon the subject, and unless bad faith or very poor judgment can be shown on the part of the executor, the courts will not interfere.

10. A man dies leaving a will bequeathing $10,000 to his wife in lieu of dower, $5,000 to his daughter, and the remainder of his property, both real and personal, after the payment of all debts, to his son A, also stating that his other sons, B and C, have already received their share of the estate. Can the estate be settled without probating will?

A. If all debts are paid and the widow and the other children will join in a quit claim deed to A, his title will be as good as if the will had been probated.

11. A testator leaves real estate in trust with full power to trustee to sell in his discretion. The trustee deems it best for the estate to hold the unimproved for an advance. Should the taxes and assessments thereon be charged to income or principal account?

A. The courts of this country hold generally that it is the duty of a trustee to see that the equitable tenant for life pays all ordinary rates and taxes. Interest on incumbrances and charges for ordinary repairs are also to be paid by him. In the case of permanent improvements to the estate the income is held liable for the interest and the remainder-man for the principal.

12. A having left a will at his death leaving his property to his children—son and daughter—and that the daughter should during her husband's life receive only her interest upon her share of the property. Now the daughter has obtained an absolute divorce from her husband and requests that the estate be now settled and that she be given her share out of it. Can the executor now proceed to close the estate and turn over to the daughter her share?

A. The testator often directs that the income only is to go to the heir while she remains the wife of her present husband. Under such a clause she would take the property

upon obtaining an absolute divorce. But in view of the fact that it is usual to employ such phraseology to express such intention, it is not likely that any court would allow a divorce to have the same effect as the death of the husband, where the death is specifically mentioned as the event upon the occurrence of which the property shall vest. Courts construe the words of a will very strictly unless there is strong affirmative evidence that they do not accurately express the intention of the testator.

13. Can an estate give a twenty years' lease on a piece of property? Said property, according to will, cannot be sold, there being a minor only seven years old.

A. It is a general rule of law that a guardian's lease of his ward's lands cannot extend beyond the minority of the ward, unless the latter approves the lease upon arriving at age; that a lease of an infant's land is not good beyond his majority without his subsequent consent or an order of the court, and that an order of the court cannot be obtained except for good cause and in accordance with the provisions of the will.

14. Is a will without witnesses, made in Virginia, a legal document?

A. A will made in Virginia, and unwitnessed, is valid if it is wholly in the handwriting of the testator; otherwise it is not valid.

15. If the issue of one of the four heirs of an estate dies before the settlement of the estate, would the surviving parent of that issue inherit what the issue would, had it lived until the estate was settled, the will providing that in the event of the death of anyone of the heirs the issue of that heir would receive the portion the parent would if living? The question is, does the surviving parent inherit what the child could not owing to decease before settlement of the estate?

A. Our correspondent fails to keep firmly in mind the fact that the property is given to the parent in the first place, and is to go to the issue of such parent only in case the parent himself is dead and unable to take when the time for distribution arrives. If the parent is alive when that time arrives he will take the property whether he has

any children alive at that time or not. It is not the decease of the child of an heir that prevents that child from taking part of the property at distribution.

16. A man provides in his will that all real estate goes to his wife. Said real estate is situated in the States of New York and Connecticut. Now, if the will is probated in New York, what steps must be taken in order to have the Connecticut property transferred?

A. The Connecticut statutes say: "When a will conveying property situated in this State has been proved and established out of this State, in and by a court of competent jurisdiction, the executor of said will, or any person interested in said property, may produce to the court of probate in the district in which any of said property is situated a duly authenticated and exemplified copy of such will, and of the record of the proceedings proving and establishing the same, and request that such copies be filed and recorded, and if, upon due hearing had after public notice and such citation as said court shall order, no sufficient objection be shown, said court shall order said copies to be filed and recorded, and they shall thereupon become part of the files and records of said court, and shall have the same effect upon the property so conveyed as if said will had been originally proved and established in said court of probate."

17. 1. X dies, leaving a large estate divided among his wife and several heirs. He also leaves a life insurance policy for the benefit of "his heirs." He has quite a number of relatives who were not mentioned in his will. Are the heirs who should benefit by this life insurance, those mentioned by his will or every blood relation?

2. Is an administrator of an estate obliged, within a certain time, to notify any or every beneficiary mentioned in a will of the fact?

3. Has an administrator or executor a right to collect a life insurance policy under the above mentioned provision, "his heirs, etc."?

4. In the settlement of an estate where no time is mentioned in the will that the estate should be settled up and closed are the executors obliged at any given time to pay the heirs their several portions?

A. 1. If a will leaves a legacy to certain persons described as "heirs" of the testator the legacy will go to those persons known in law as his heirs unless there is something

in the will to show beyond a doubt that he attached a different meaning to the word. He has a right to dispose of his property as he will. If he uses the word "heirs," or any other word, the natural conclusion is that he uses it in its proper sense, but if it is shown clearly that he used it in any other sense that use of the word must be followed or his right to dispose of his property as he pleases must be thwarted; the court will follow his definition of the word if there is no doubt as to what this definition is.

2. All heirs are entitled to be notified, either by the executor or the judge, that a will has been offered for probate.

3. It is the duty of an executor or administrator to collect and take possession of all the personal property formerly belonging to the deceased. They have the same right in this respect that he would have if he were alive. It is their right and duty to collect the insurance on the life of the deceased. The claim of the heirs or beneficiaries is not a claim against the insurance company or any other debtor; it is a claim against the executor or administrator, and it cannot be satisfied until this person has collected the money.

4. As soon as all claims against the estate have been advertised for, presented, examined and settled, the executor or administrator must immediately begin to make distribution among the heirs or beneficiaries. He is acting under the supervision of the judge all the time, and if any heir or beneficiary thinks he is proceeding too slowly he may be immediately called upon to report to the court and justify his delay. If he cannot do so he may be removed.

18. 1. Do you think it wise and prudent to have a will acknowledged before a notary public?

2. Would the maker of the will and the subscribing witnesses have to appear before the notary public?

A. 1. We know of no advantage to be gained by acknowledging a will before a notary public.

2. The notary would attest that the witnesses had appeared before him and acknowledged that the signatures

were their own and that the document was represented to them by the testator to be his will; or all of the parties might appear before him so that his seal would cover both statements. In either case the notary would simply be an additional witness.

19. A will is now in existence under which A is to receive a certain amount of property. Suppose A now makes a will while the testator from whom he expects to receive the property is still alive, and A's will attempts to dispose of this property, will that disposition be effective if the first testator dies before A?

A. If A should die in this case, after the death of the person under whose will he is entitled to certain property, that property will pass by A's will if he has attempted to dispose of it in this manner. A will speaks from the death of the testator. When the original testator dies, in this case, his will will become immediately effective and the property devised to A will immediately vest in him. Then upon A's subsequent death, no matter how soon it occurs after the death of the first testator, A's legacy will pass by his will to the person named in it.

20. A friend of mine died lately, leaving a will making his wife (who has no children), sole executrix. It was supposed that the estate would show a surplus of $5,000 to $10,000, but we are astonished to find debts of about $3,000 and assets of only about $1,000 before paying funeral expenses. How is the executrix to proceed after having her administration papers?

A. The funeral charges and the expenses of the decedent's last sickness, including the physician's bill, with the expenses of proving the will, and all other costs which are incidental to putting herself into the position of legal representative of the deceased, must be paid first. Next the debts are to be paid in the following order:

1. Debts entitled to a preference under the laws of the United States. 2. Taxes assessed upon the estate of the deceased previous to his death. 3. Judgments docketed and decrees enrolled against the deceased, according to the priority thereof respectively. 4. All recognizances, bonds, sealed instruments, notes, bills and unliquidated demands and accounts.

21. "I leave the income of my estate to my daughter during her life. At her death the principal to be divided amongst my heirs, per stirpes but not per capita." Does this mean that only such heirs as have issue shall divide the principal, and is it theirs outright, or must it be held in trust for such issue?

A. If a testator leaves property to his daughter during her life, and directs that it shall go to his heirs upon the death of the daughter, that word heirs is sufficient to identify the persons who are to succeed to the property upon the death of the daughter. The heirs take whether they have issue or not, and they take absolutely, and not as mere beneficiaries of a trust, unless it is expressly provided otherwise. In the case our correspondent puts it is plainly the intention that the trust shall come to an end upon the death of the daughter. The language of the will is that the principal is then to be divided among the heirs.

22. "As to the residue of my estate, both real and personal, I direct that the same shall remain under the care of my executors until the youngest child of either of my said daughters, now living or hereafter to be born, shall become twenty-one years of age, and the said estate with the increase shall be equally divided among all of my grandchildren then living, and if any are dead, leaving issue, such issue to stand in the place of the parent and receive the parent's share." Is the father of a deceased great-grandchild entitled to a share in the estate?

A. We do not see any difficulty in the case. The money was given to the executors and no inheritable interest vested in any of the beneficiaries until the date assigned in the will. All the grand-children living at the time the bequest took effect, that is, on the day the youngest became twenty-one, were entitled to a distributive share; and if any issue of a deceased grandchild was alive that day, such issue then had a vested interest it could bequeath, or which the legal heirs of such issue could subsequently inherit in case the issue died before the distribution was actually made.

23. In the case of a person desiring to make equal provision for wife and children, is there any particular necessity or advantage in making a will?

A. If a man dies intestate, leaving children, his widow

has her dower right in his realty, and her legal share of his personal property. The fee of the real estate and the remaining shares of the personal property are divided equally among the children, or their descendants. There are many advantages in a will. It appoints an executor, whereas, if the widow became administrator she must give bonds in twice the amount of the personal estate, and might find it difficult to obtain a bondsman.

24. If a single man makes a will and marries afterward, does that marriage entitle the wife to her third, even if the will was made previous to the marriage?

A. A will made before marriage is void and valueless as to all parties affected by such marriage.

25. 1. Have the executors any discretion under a will? Would they be justified in purchasing bonds outside of the legalized investments for trust funds? If not what liability do they incur should they do so?

2. Does the consent of all the heirs relieve the executors?

A. 1. Where money is to be invested by trustees, in their discretion, and no specific directions are given as to the securities in which it is to be invested, the trustees are only liable for any want of ordinary prudence such as a person would exercise in the management of his own property. This rule, of course, excludes all speculation and all investments for an uncertain rise. When the beneficiaries of the fund are minors the courts are very strict in their interpretation of the will allowing the trustee to use his discretion, and he might be held personally liable, under a breach of duty, for any loss the fund might sustain.

2. If the heirs are of an age to consent, and do consent to any specific investment of the fund, they will be estopped from holding the trustee personally liable.

LEGAL TERMS AND DEFINITIONS.

A.

Ad filum aquæ.—To the middle of the stream.
Ad damnum.—To the damage.
ADJUDICATION.—The act or process of trying and determining judicially.
Ad quem.—To which.
A fortiori.—With stronger reason.
AGISTER.—One who takes in cattle and horses to pasture at a certain rate.
Aliunde.—From another place.
ANCILLARY.—Auxiliary.
Ante.—Before.
APPELLANT.—One who removes a cause from a lower to a higher tribunal.
APPELLEE.—The defendant in an appeal.
ASSIGNEE.—A person to whom an assignment is made.
ASSIGNOR.—A person who transfers an interest.
ASSUMPSIT.—A contract or promise, express or implied, oral or written, not under seal, founded on a consideration.

B.

Bona fide.—In good faith; in reality.

C.

Caveat emptor.—Let the buyer beware.
Caveat venditor.—Let the seller beware.
Cestui que trust.—He who is the real and beneficial owner of property held in trust.
CHATTEL.—Every kind of property except real estate.
CHOSE.—A thing personal property.
Consensus facit legem.—Consent makes the law. A contract is law between the parties having received their consent.
CONSIGNEE.—The person to whom goods or other things are delivered in trust for sale or superintendence.
CONSIGNOR.—One who sends, delivers or commits goods or other things in trust to another for sale or superintendence.
Consuetudo debet esse certo.—A custom ought to be certain.
COMITY.—The extension of civilities to communities.

COMPLAINANT.—One who commences a legal process by a complaint.

Cum onere.—With the burden.

D.

De facto.—From the fact.

De jure.—From the law.

Delegatus non potest delegare.—A delegate or deputy cannot appoint another.

Dicta.—Opinions but not adjudications.

DEMURRER.—A stop or pause by a party to an action for the judgment of the court on any question as to the truth of the matter alleged by the opposite party.

Descriptio personae.—Description of the person.

Donatio causa mortis.—Gift in anticipation of immediate death.

DURESS.—Personal restraint or fear of personal injury or imprisonment.

E.

EASEMENT.—A liberty, privilege or advantage without profit, which one proprietor has in the estate of another proprietor, distinct from the ownership of the soil, as a way, water-course, etc.

ENURE.—To serve to the use or benefit of.

EQUALITY is equity.

EQUITIES.—Fair claims.

EQUITY follows the law.

" looks upon that as done which ought to be done.

" suffers not a right without a remedy.

ESTOPPEL.—A stop.

Et al.—And others.

Et seq.—And the following.

Ex æquo et bono.—Agreeably to what is good and right.

Ex delicto.—From the crime.

Ex mero motu.—Of his own accord.

Ex necessitate.—From the necessity.

Ex nihilo nihil fit.—From nothing nothing comes.

Ex nudo pacto non aritur actio.—No action arises on a contract without a consideration.

Ex parte.—One side only.

F.

Fiat justitia ruat cœlum.—Let justice be done though the heavens fall.

FIDUCIARY.—One who holds a thing in trust for another.

Fi fa.—That you cause to be done.

Frans est celare fraudem.—It is a fraud to conceal a fraud.

G.

GARNISHMENT.—Legal notice to one to appear and give information to the court on any matter.
GRANTEE.—The person to whom a grant is made.
GRANTOR.—The person by whom a grant is made.

H.

Habendum.—One of the formal parts of a deed; its office is to limit or define the estate granted. Is so called because it begins with the words "to have."

I.

Id certum est quod certum reddi potest.—That is certain which may be rendered certain.
Ignorantia excusatur, non juris sed facti.—Ignorance of fact may excuse, but not ignorance of law.
Impotentia excusat legem.—Impossibility is an excuse in law.
Incolas domicilium facit.—Residence creates domicile.
Index animi sermo.—Speech is the index of the mind.
Indicia.—Discriminating mark; signs.
INDORSEE.—The person to whom a note or bill is indorsed or assigned by indorsement.
INDORSER.—The party by whom a note, bill or check is indorsed.
In fra.—Below.
In ipsis verbis.—In this language or words.
Injurio non prasumitur.—A wrong is not presumed.
IN LIEU.—Instead.
In pais.—Matter of fact as distinguished from that of record.
In personam.—In person.
In praesenti.—At the present time.
In propria causa nemo judex.—No one can be judge in his own cause.
In re.—In the matter of.
In rem.—Against the thing or property.
Inter alia.—Among other things.
In terrorem.—As a warning.
Inter sese.—Among themselves.
Inter vivos.—Between the living.
In toto et pars continetur.—A part is included in the whole.
In transitu.—On the passage.
INURE.—See Enure.

J.

J.—Judge.
Judicis est jus dicere non dare.—It is the duty of a judge to declare the law not to enact it.

Juratores sunt judices facti.—Jurors are the judges of the facts.

Juro publico anteferendo privatis—Public rights are to be preferred to private.

L.

Lata culpa dolo aequiparatur.—Gross negligence is equal to fraud.

LAW construeth every act to be lawful when it standeth different, whether it be lawful or not.

LAW construeth things according to common possibility or intendment.

LAW construeth things to the best.

" " " with equity and moderation.

" disfavoreth improbabilities.

" favoreth charity.

" " common right.

" " diligence, and therefore, hateth folly and negligence.

LAW favoreth honor and order.

" " justice and right.

" " life, liberty, and dower.

" " mutual recompense.

" " possession where the right is equal.

" " public commerce.

" " " quiet.

" " speeding men's causes.

" " things for the commonwealth.

" " truth, faith, and certainty.

" hateth delays.

" " wrong.

" hath new inventions and innovations.

" of itself prejudiceth no man.

" respecteth matter of substance more than matter of circumstance.

LAW respecteth possibility of things.

" " the bonds of nature.

LAWFUL things are well mixed unless a form of law oppose.

Le contrat fait la loi.—The contract makes the law.

Leges humanae nascuntur vivunt et moriuntur.—Human laws are born, live and die.

Leges posteriores priores contrarias abrogant.—Subsequent laws repeal prior conflicting ones.

Lex domicilii.—Law of residence.

Lex loci rei sitæ.—The law of the place of situation of the thing.

Lex succurit ignoranti.—The laws succor the ignorant.

Lex uno ore omnes alloquitur.—The law speaks to all with one mouth.

Lex vigilantibus non dormientibus subvenit.—Law assists the wakeful not the sleeping.

LIEN.—Legal claim.

Locus contractus regit acture.—The place of the contract governs the act.

Locus penitentiae.—Place for repentance.

Longa possessio est pacis jus.—Long possession is the law of peace.

M.

Magna culpa dolus est.—Great neglect is equivalent to fraud.

Melior est causa possidentis.—The cause of the possessor is preferable.

MESNE.—A process or action introduced into a suit or intervening between the beginning and end of a suit.

Mobilia personam sequntur, immobilia situm.—Movable things follow the person; immovable their locality.

Mobilia sequntur personam.—Movables follow the person.

Mors omni solvit.—Death dissolves all things.

MORTGAGEE.—The person to whom a mortgage is made or given.

MORTGAGOR.—The person who conveys real property as security for debt.

N.

Necessitas est lex temporis et loci.—Necessity is the law of a particular time and place.

Ne exeat.—Let him not depart.

Nemo præsumitur molus.—No one is presumed to be bad.

Nihil dat qui non habet.—He gives nothing who has nothing.

Nisi.—Unless.

Non est.—Is not.

Non facias malum ut inde veniat bonum.—You are not to do evil that good may come of it.

Non est regula quin fallat.—There is no rule but what may fail.

Nudum pactum.—A mere agreement; a contract made without any consideration and therefore void.

NUGATORY.—Of no force, ineffectual.

Nulla bona.—No goods.

Nullus commodum capere potest de injuria sua propria—No one shall take advantage of his own wrong.

O.

Obiter.—An opinion expressed by a court, but which not being necessarily involved in the case, loses the force of an adjudication.

Omne quod inædificatur solo credit.—Every thing belongs to the soil which is built upon it.

Omnis consensus tollit errorem.—Every consent removes error.

Onus.—The burden.

Optima enim est legis interpres consuetudo.—Usage is the best interpreter of law.

P.

Per capita.—By the head.

Per contra.—Contrariwise.

Per stirpes.—Root of a race.

Post.—After.

PREPONDERANCE.—An outweighing, superiority of weight.

Prima facie.—On the first view.

Prior tempore potior jure.—He who is first in time is preferred in right.

Probandi necessitas incumbit illi qui agit.—The necessity of proving lies with him who sues.

Proces verbal.—A written statement.

Pro rata.—According to the rate or proportion.

Pro tanto.—For so much.

Q.

Quod ad jus naturale attinet omnes homines æquales sunt.—All men are equal as far as the natural law is concerned.

Quo warranto.—An ancient writ still in use directed against any person or corporation who usurp any office, franchise, or liberty calling upon them to show by what authority they support their claim.

R.

Ratihabitio mandato aequiparatur.—Ratification is equal to command.

REFEREE.—A person to whom has been referred a matter in dispute in order that he may settle it.

REPLEADER.—A second pleading or course of pleadings.

REPLEVIN.—To take or get back by a writ for that purpose goods wrongfully taken and retained.

Res denominatur a principaliori parte.—A thing is named from its principal part.

Res gestae.—The subject-matter.

RESPONDENT.—One who answers in certain suits on appeal.

Respondentia.—Shipping contract given as security on goods for loan of money.

S.

Scientia utrius que par pares contrahentes facit.—Equal knowledge on both sides makes the contracting parties equal.

SCIENTER.—Knowingly.
Scintilla.—An iota; the least particle.
Scribere est agere.—To write is to act.
Scire facias.—Cause it to be known.
Semper sexus masculinus etiam fac minimum continet.—The male sex always includes the female.
Servitia personalia sequuntur personam.—Personal services follow the person.
Sui generis.—Of its own kind.
Supra.—Above.

T.

Tantum non est quantum verdi passunt.—Things are worth what they will sell for.
Testamenta latissimam interpretationem habere debent.—Wills ought to have the broadest interpretation.
TORT.—A form of action for a wrong or injury.
Traditio loqui facit chartum.—Delivery makes the deed speak.
TROVER.—An action to recover damages against one who found goods, and would not deliver them to the owner on demand.

U.

Ubi supra.—Where above mentioned.
Ultra vires.—Beyond authority in case of corporations.
Usus est dominium fiduciarum.—A use is a fiduciary ownership.

V.

VENDEE.—The person to whom a thing is sold.
VENDOR.—Seller.
Venire facias de novo.—A new writ to correct error.
Verba intentioni, non e contra debent inservire.—Words ought to be made subservient to the intent, not contrary to it.
VERBATIM.—In the same words.
Vire et uxor consentur in lege una persona.—Husband and wife are considered one person in law.
Virtute officii.—By virtue of office.
Vis legibus est inimica.—Force is inimical to the laws.
Volenti non fit injuria.—He who consents cannot receive an injury.
Voluntas reputabatur pro facto.—The will is to be taken for the deed.

W.

WAIVES.—Abandons; forsakes.
When no time is limited, the law appoints the most convenient.

When the common law and statute law concur, the common law is to be preferred.
When the foundation fails, all fails.
When the law gives any thing, it gives a remedy for the same.
When the law presumes the affirmative, the negative is to be proved.
When two titles concur, the best preferred.
Where there is equal equity, the law must prevail.
Where two rights concur, the more ancient shall be preferred.

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MAY 15 1908
MUSEUMS

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ACKNOWLEDGMENT.

State of }
County of } ss.

On this day of A. D. , before me personally came A. B., to me known to be the individual described in, and who executed the within instrument, and acknowledged that he executed the same for the purposes therein mentioned.

[*Signature and title of officer.*

ARBITRATION—SUBMISSION AGREEMENT.

[With provision for an Umpire, etc.]

Know all men by these presents: That controversies exist and have for a long time existed between A. B., of , and C. D., of

That said A. B. and C. D., do hereby mutually agree to and with each other to submit all and all manner of actions, cause and causes of action, suits, controversies, claims and demands whatsoever, now pending, existing, or held by and between them to as arbitrators, who shall arbitrate, award, determine, judge, and order of and concerning the same.

That said arbitrators shall have power to award payment of the costs and expenses incurred in said arbitration.

That said award shall be made in writing, under the hands of said arbitrators, ready to be delivered to us, or either of us, on or before the day of

That in case said arbitrators do not make their award on or before said day, then the matters and things above submitted shall be, and are by these presents submitted to the decision of such third person as shall be then, or shall theretofore have been appointed (in writing and indorsed thereon) by said arbitrators to act and arbitrate of and concerning said premises, and make his award and umpirage in writing on or before the day of

That said parties do mutually covenant to and with each other that the award (and umpirage) made as aforesaid shall by each of them and their legal representatives be well and faithfully kept, observed and performed.

Witness our hands and seals, this day of 19

[*Signature of Witness.*] [*Signature.*]

ARBITRATION—AWARD.

Know all men by these presents: That by agreement bearing date the day of , the matters in difference, etc., between A. B. and C. D. were by them submitted to the consideration of the undersigned arbitrator, to hear, determine, and award concerning the same.

That by virtue of said agreement, and after hearing the allegations and proofs of said parties, and examining the subjects in controversy between them, I do award, determine and order as follows:

That etc. (*Set out the award clearly.*)

Witness my hand and seal, this day of 19

[*Signature of Witness.*] [*Signature.*]

ASSIGNMENT—WITH CONDITIONS—WITH POWER OF ATTORNEY.

Know all men by these presents: That I, , for value received, do hereby grant' assign, transfer, and convey unto E. F. (*here describe the property*). To have and to hold the same forever, hereby appointing and constituting said E. F. my true and lawful attorney in my name, place, and stead, for the purpose aforesaid, to ask, demand, sue for, attach, levy, recover, and receive all such sum and sums of money, which are now or may hereafter become due and payable for or on account of all or any of the accounts, dues, debts, demands, judgments, rights, credits, and choses, above assigned, giving and granting unto the said attorney full power to do and perform all and every act and thing whatsoever requisite and necessary, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby rectifying and confirming all that the said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal this day of 19

[*Signature of Witness.*] [*Signature.*]

ASSIGNMENT—ACCOUNT.

Know all men by these presents: That I, A. B. (of), in consideration of dollars, the receipt of which is hereby acknowledged, do hereby assign, transfer and set over unto E. F. (of) his executors, administrators and assigns, and to his and their own proper use and benefit, all my title and interest in and rights under any and all sum or sums of money now due or to grow due upon the annexed account, or upon the sales, loans, (services, etc.) therein mentioned.

That I do hereby give said E. F. (his executors, administrators and assigns) full authority and power to ask, collect, demand, receive, receipt for, compound and acquit, and in my name or otherwise to institute, prosecute and withdraw any action at law, or suits in equity therefor.

In witness whereof, I have hereunto set my hand and seal this day of 19

[*Signature of Witness.*] [*Signature.*]

ASSIGNMENT—BILL OF SALE.

Know all men by these presents: That A. B., by his deed and bill of sale, bearing date the day of and which is hereunto annexed, did for the consideration (of) therein expressed, bargain, sell and deliver to said C. D. the household goods, implements, and utensils in and about the dwelling house at , a schedule of which is attached to said bill of sale hereunto annexed. That said C. D. for a consideration of dollars, does by these presents bargain, sell, assign, and set over to E. F. all and every said goods, implements, and utensils which are in said bill of sale and schedule annexed mentioned, to have and to hold the same forever.

And said C. D. does hereby covenant that said goods, implements, etc., are, etc. (*The schedule of articles sold.*)

In witness whereof, I have hereunto set my hand and seal this day of 19

[*Signature of Witness.*] [*Signature.*]

ASSIGNMENT—BOND.

Know all men by these presents: That I, A. B., the undersigned, in consideration of the sum of dollars, the receipt of which is hereby acknowledged, do by these presents assign, sell, and transfer unto C. D. his executors, administrators, and assigns, a certain written bond or obligation, and the conditions thereof bearing date the day of A. D. , executed by E. F. and W. his wife to said A. B. and all the sum and sums of money due and to grow due thereon, together with all my title and interest in and rights under the same.

In witness whereof, I have hereunto set my hand this day of , A. D. 19

[*Signature.*

ASSIGNMENT—DEBT.

I the undersigned A. B. (of), in consideration of dollars (the receipt of which I hereby acknowledge), do assign, transfer, and set over to E. F. (of) a certain debt due owing from C. D. (of), for (*here state what the debt is for,*) amounting to dollars.

I do hereby covenant that said sum of dollars is justly owing and due to me; that there is no counter claim, cross-demand or set-off against the same and that the same is not, nor will be barred by the statute of limitations for from the date hereof. And that I have neither done nor shall do anything to discharge or lessen said debt, or hinder said E. F. or his assigns from collecting the same.

In witness whereof, I have hereunto set my hand and seal this day of 19

[*Signature of Witness.*] [*Signature.*]

ASSIGNMENT—INSOLVENT DEBTOR.

Know all men by these presents: That I, A. B., of , am indebted to divers persons and unable to pay the several amounts of their claims in full, and desire to convey all my property for the benefit of all my creditors, without preference or priority. That in consideration of the premises, I do by these presents grant, bargain, sell, assign, transfer and set over unto E. F., all my lands, tenements, hereditaments, goods, chattels, rights, credits and effects of every name, nature and description (saving only such property as is exempt by law from attachments and execution), in trust nevertheless, to sell and dispose of and collect the same, with full power to compound, adjust and settle for the same or any part thereof, and apply the proceeds as follows: To pay all costs and charges of these presents, and the lawful expenses of executing the trust hereby created. To distribute and pay the remainder of said proceeds, ratably and in equal proportions, to my creditors, in satisfaction and release of all debts by me owing. To repay me, my executors, administrators and assigns the residue of said proceeds, if any there be.

In witness whereof, I have hereunto set my hand and seal this day of 19

[*Signature of Witness.*] [*Signature.*]

ASSIGNMENT—INSOLVENT DEBTOR.

Know all men by these presents:—That this assignment made the day of in the year , by A. B. and C. D., partners in trade and business, under the name, style, or firm of B. & D., of the first part, to E. F., of ——, of the second part, witnesseth; That whereas the said copartnership is justly indebted in considerable sums of money, and has become unable to pay and discharge the same with punctuality, or in full: and the said parties of the first part are now desirous of making a fair and equitable distribution of their property and effects among their creditors; Now, therefore, the said parties of the first part, in consideration of the premises, and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, released, assigned, transferred and set over, and by these presents do grant, bargain and sell, release, assign, transfer and set over unto the said party of the second part and to his heirs and assigns forever, all and singular the lands, tenements, and hereditaments, situate, lying, and being within the State of , and all the goods, chattels, merchandise, bills, bonds, notes, books, accounts, claims, demands, choses in action, books of accounts, judgments, evidence of debt, and property of every name and nature whatever, of the said parties of the first part, more particularly enumerated and described in the schedule hereto annexed, marked "schedule, A"; to have and to hold the same and every part and parcel thereof, with the appurtenances to the said party of the second part, his heirs, executors, administrators, and assigns; In trust nevertheless, and to and for the following uses, intents, and purposes, that is to say; that the said party of the second part shall take possession of all and singular the lands, tenements, and hereditaments, property and effects, hereby assigned, and sell and dispose of the same, upon such terms and conditions as in his judgment may appear best, and most for the interest of the parties concerned, and convert the same into money; and also to collect, all and singular the said debts, dues, bills, bonds, notes, accounts, claims, demands, and choses in action, or so much thereof as may prove collectible; and thereupon to execute, acknowledge, and deliver all necessary conveyances and instruments for the purposes aforesaid; and by and with the proceeds of such sales and collections, the said party of the second part shall first pay and disburse all the just and reasonable expenses, costs, charges, and commissions, of executing and carrying into effect this assignment, and all rents, taxes and assessments due or to become due on the lands, tenements and hereditaments aforesaid, until the same shall be sold and disposed of; and by and with the residue, or net proceeds and avails of such sales and collection, the said party of the second part shall:

FIRST.—Pay and discharge in full the several and respective debts, bonds, notes and sums of money due or to grow due from the said party of the first part, or for which they are liable, to the said party of the second part, and the several other persons and firms designated in the schedule hereto annexed, marked "Schedule B," together with all interest moneys due, or to grow due thereon; and, if said net proceeds and avails shall not be sufficient to pay and discharge the same in full, then such net proceeds and avails shall be distributed pro rata, share and share alike, among the said several persons and firms named in said schedule B. according to the amount of their respective claims; and,

SECOND.—By and with the residue and remainder of said net proceeds and avails, if any there shall be, the said party of the second part shall pay and discharge all the copartnership debts, demands and liabilities whatsoever, now existing, whether due or hereafter to become due, provided such remainder shall be sufficient for that purpose; and, if sufficient, then the same shall be applied pro rata, share and share alike, to the payment of said debts, demands and liabilities, according to their respective amounts; and,

THIRD.—By and with the residue and remainder of the said net proceeds and avails, if any there shall be, the said party of the second part shall pay and discharge all the private and individual debts of the parties of the first part, or either of them, whether due, or to grow due, provided such remainder shall be sufficient for that purpose; and if insufficient, then the same shall be applied pro rata, share and share alike, to the payment of the said debts, according to their respective amounts; and,

LASTLY.—The said party of the second part shall return the surplus of the said net proceeds and avails, if any there shall be, to the said parties of the first part, their executors, administrators, or assigns.

And for the better execution of these presents, and of the several trusts hereby reposed, the said parties of the first part do hereby make, nominate and appoint the said party of the second part, their, and each of their true and lawful attorney irrevocable, with full power and authority to do, transact, and perform all acts, deeds, matters and things, which can or may be necessary in the premises, as fully and completely as the said parties of the first part, or either of them, might or could do, were these presents not executed; hereby ratifying and confirming all, and everything whatever, our said attorney and attorneys shall do, or cause to be done, in the premises.

The said party of the second part doth hereby accept the trust created and reposed in him by this instrument, and covenants and agrees to and with the said party of the first part, that he will faithfully and without delay execute the created trust according to the best of his skill, knowledge and ability.

In witness whereof, the said parties have hereunto set their respective hands (and seals) the day and year above written.

Signed, sealed and delivered in the presence of G. H.

B. & D. by A. B. [SEAL.]
A. B. [SEAL.]
C. D. [SEAL.]
E. F. [SEAL.]

ASSIGNMENT—INSURANCE POLICY.

[With Agent's Approval.]

The property hereby insured, having been purchased by E. F., the Insurance Company consent that the interest of C. D. in the within policy may be assigned to said purchaser, subject, nevertheless, to all the terms and conditions therein mentioned and referred to.

Dated at this day of 19

[*Signature of Insurance Agent.*]

For value received, I hereby assign, transfer and set over unto E. F., (and his assigns) all my title and interest in and rights under this policy of insurance, and all benefit and advantage to be derived therefrom.

Witness my hand (and seal) this day of 19

[*Signature of Witness.*] [*Signature.*]

ASSIGNMENT—MONEY ON ACCOUNT.

Know all men by these presents: That A. B. in consideration of the sum of , to him in hand paid, does hereby assign, transfer and set over all his title and interest in and rights under an account for (*state what*) in the sum of , hereunto annexed, and all other sum and sums of money remaining due and payable upon said account, unto E. F. with full power to ask, demand and receive the same (at his own costs and expenses) to his own use, and to give discharges and receipts for the same, or any thereof.

That there is due said A. B. on said account, at the date of these presents, the sum of , and that he has not received or discharged the same.

In witness whereof, I have hereunto set my hand and seal this day of 19

[*Signature.*]

ASSIGNMENT—MORTGAGE OF REAL PROPERTY.

Know all men by these presents: That I, C. D., of , in County, State of , the mortgagee named in a certain mortgage given by A. B. of in County, State of , to said C. D., to secure the payment of dollars and interest, dated the day of , recorded in the volume , on page of the registry of deeds for the County of in consideration of the sum of dollars to me paid by E. F. of , in County, State of the receipt of which is hereby acknowledged, do hereby sell, assign, transfer, set over and convey unto said E. F. his heirs and assigns said mortgage, and the real estate thereby conveyed, together with the promissory note, debt and claim thereby secured, and the covenants therein contained. To have and to hold the same to him, the said E. F. and his heirs and assigns, to his and their use and behoof forever; subject nevertheless to the conditions therein contained (and to redemption according to law).

In witness whereof I have hereunto set my hand (and seal) this day of 19

Executed and delivered in presence of } [*Signature.*] [SEAL.]

AUTHENTICATION—COPY OF ACCOUNT.

State of } ss.
County of }

I hereby certify that (above *or* foregoing *or* within) is an exact (exemplified) copy of the (administration, *or* other) account of A. B. or A. R. administrator of the estate of D. D. deceased or E. K. executor of the last will and testament of D. D. deceased audited, passed and filed in the office of the , of County, State of .

In testimony whereof, I have hereunto set my hand and seal this day of 19

[*Signature and Official Title*] [SEAL.]

AUTHENTICATION—COPY OF RECORD.

State of } ss.
County of }

I hereby certify that the above *or* annexed (*or* foregoing, *or* within) has been carefully compared with verified and is a correct transcript of the whole of (*state what*) as the same appears of record, Vol. Pages of (*state the kind or nature of record*) in the office of the , of , in .

In testimony whereof, I have hereunto set my hand and seal this day of 19

[*Signature.*]

BILL OF SALE—GENERAL FORM OF WARRANTY.

Know all men by these presents: That in consideration of dollars, the receipt of which is hereby acknowledged, I do hereby grant, sell, transfer, and deliver unto C. D. his heirs, executors, administrators, and assigns the following goods and chattels, viz. (*describing it*)

To have and to hold all and singular the said goods and chattels forever. And said grantor hereby covenants with said grantee that he is the lawful owner of said goods, and chattels; that they are free from all incumbrance and that he has good right to sell the same as aforesaid.

That he will warrant and defend the same against the lawful claims and demands and demand of all persons whomsoever.

In witness whereof, the said grantor has hereunto set his hand this day of ,

[*Signature of Witness.*] [*Signature.*]

BANK FORM—NEGOTIABLE NOTE.

$—— PHILADELPHIA, PA.,——, 19——

Sixty days after date (*or*, on the day of 19 , *or*, on demand), I promise (*or*, we promise, *or* we jointly and severally promise) to pay to A. B., or order (*or* to A. B. or bearer), one thousand dollars (*insert* with interest, *if it is to bear interest*), for value received. (*Also add place of payment if any is understood.*)

[*Signature of maker.*]

BANK FORM—NON-NEGOTIABLE NOTE.

$—— PHILADELPHIA, PA., ——, 19——

Sixty days after date (*or otherwise, as above*), I promise to pay to A. B. one thousand dollars, for value received, (*insert* with interest, *if it is to bear interest*). (*Also add place of payment if any is understood.*)

[*Signature of maker.*]

BANK FORM—CERTIFICATE OF DEPOSIT.

B. R. S. & CO., BANKERS.

$—— HARTFORD, CONN., ——, 19——

D. R. has deposited with us dollars, payable to P. E. (*or* himself) or order on return of this certificate.

[*Signature of maker.*]

BANK FORM—PROTEST NOTICE—GENERAL FORM.

To SPRINGFIELD, MASS., ——, 19——

A bill of exchange (*or* promissory note) drawn (*or* made) by , in favor of , for dollars, dated the day of , indorsed by , was delivered to me for protest by the holder, being this day due, its acceptance (*or* payment) was demanded and refused. You will be held for its payment.

[*Signature of Notary Public.*] [SEAL.]

BOND OF OBLIGATION—GENERAL FORM.

Know all men by these presents: That I, A. B., of the town of in the county of and State of am held and firmly bound unto C. D., of in the sum of one thousand dollars to be paid to the said C. D., his executors, administrators or assigns, for which payment well and truly to be made, I bind myself, my heirs, executors, administrators, firmly by these presents.

Sealed with my Seal, Dated the day of

The condition of the above obligation is such: that if the above bounden A. B., his heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the above named C. D., his executors, administrators or assigns the just and full sum of five hundred dollars in five equal annual payments from the date hereof, with annual interest, then the above obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered in presence of } [*Signature.*] [SEAL.]

BOND OF OBLIGATION—ANNUITY.

[Payment of Annuity for a Term of Years.]

Know all men by these presents: That I, A. B., of , county of , and State of , am (*or* we A. B., of , and C. D. of , are) held and firmly bound unto W. D. widow of D. D. deceased, of the town of in the county of and State of (*or* unto D. D. of and W. D. of etc.) in the sum of dollars, good and lawful money of the United States, to be paid to the said W. D., her executors, administrators, or assigns (*or* to the said D. D. and W. D., their executors, administrators or assigns,) for which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, (*or* we do bind ourselves, our heirs, executors and administrators,) jointly or severally and firmly by these presents.

Sealed with my seal (*or* our seals); dated this day of , 19 .

The condition of the above obligation is such: that if the above bounden A. B., his (*or* A. B. C. D., their) heirs, executors or administrators, or any of them, shall yearly and every year, during the term of years, to be computed from the day of (last past before) the day of the above written obligation, well and truly pay or cause to be paid, unto the above named W. D. her executors, administrators or assigns, the annuity or clear yearly sum of dollars, by even quarterly or half-yearly portions, paid at upon the days of the months of in each year, the first payment thereof to begin and be made on the day of next ensuing the day of the date of this obligation, and also pay a portionable part of the said annuity, or clear yearly payment of , for or in respect of so many days as shall have elapsed from the last half (*or* quarterly) yearly day of payment next preceding the decease of the said W. D. up to the day of her death, then this obligation is to be void; but if default shall be made in payment of the said annuity or any part thereof, at any of the times aforesaid, then the said obligation is to remain in full force.

Executed in presence of }

A. B. [SEAL.]
(*or* A. B. [SEAL.]
C. D. [SEAL.]

BOND OF OBLIGATION—INDEMNITY.

[To Indemnify Maker of Note or Acceptor of Bill for Accommodation from Loss Thereby, with Surety.]

Know all men by these presents: That we, A. B. of , in county, and State of , in the sum of dollars, good and lawful money of the United States, to be paid to the said C. D., his executors, administrators or assigns; for which payment, well and truly to be made we do bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals: dated this day of .

Whereas the said C. D. has without consideration to him moving therefor and solely for the accommodation of the above bounden A. B. made and advanced to the said A. B. his promissory note (*or* accepted a bill of exchange) drawn by upon him for dollars bearing date the day of , and payable to , (with interest) days after the date thereof;

Now the condition of this obligation is such: that if the said above bounden A. B. and B. A., their executors or administrators, or any of them shall well and truly pay the said sum of dollars, for the payment of which the said note (*or* bill) is so given and the interest thereof, on the day of payment therein mentioned, and in full discharge thereof and indemnify and save harmless the said C. D., his executors and administrators, from and against any and all suits, actions, damages, costs, charges and expenses, by reason of said note (*or* bill) then this obligation is to be void otherwise to remain in full force.

A. B. [SEAL.]
B. A. [SEAL.]

BOND OF OBLIGATION—RESPONDENTIA BOND.

Know all men by these presents: That I, M. R., master (*or* owner, *or* master and owner) of the ship or vessel called the V. now lying at the port of , am held and firmly bound unto C. D., of the city of , in the county of , and State of , merchant, (*or* unto E. F., of , and C. D., of) in the sum of dollars, good and lawful money of the United States, (*or other currency in which payment is to be made*) to be paid to the said C. D., his executors, administrators or assigns (*or* to the said E. F. and C. D., their executors, administrators or assigns) for which payment well and truly to be made, I do bind myself, my heirs, executors and administrators, and also the said ship or vessel her tackle, apparel, and furniture (and freight) firmly by these presents.

Sealed with my seal: dated this day of

Whereas the above bounden A. B. has (*or* A. B. *or* B. A. have) borrowed, taken up and received of the said C. D. the full and just sum of dollars which sum is to run at respondentia on the said ship or vessel (*here state the voyage for which the loan is made*) at the rate or premium of per cent. for the voyage (*or* at the rate of per cent for every calendar month the said ship or vessel shall be out on the said voyage, and so in proportion for a less time than a month) in consideration of which the usual risks of the seas, rivers, enemies, fires, pirates, etc., are to be on the account of the said C. D.; and whereas, for the further security of the said C. D. and said A. B. for and on the account of the owners, their executors, administrators and assigns, has agreed to, and does by these presents mortgage and assign over to the said C. D. the several goods, wares and merchandise laden and to be laden on the said ship or vessel; which said goods, wares and merchandise, with their produce, are thus mortgaged and assigned over, for the security of the respondentia taken up by the said A. B. and shall be delivered to no other use or purpose whatever until payment of this bond is first made, with the premium that may become due thereon:

Now the condition of the above obligation is such: that if the above bounden A. B., his heirs, executors and administrators or any of them shall well and truly pay, or cause to be paid, unto the said C. D. or to his attorneys (*or* to C. D. and E. F. or to their attorneys) at , legally authorized to receive the same or to the executors and administrators of the said E. F. and C. D. the just and full sum of dollars, being the principal of this bond together with the premium which shall become due thereon at the expiration of months after the safe arrival of the said ship or vessel at her moorings in the port of , or in case of the loss of said ship or vessel, such average as by custom shall have become due on the salvage, then this obligation is to be void; otherwise to remain in full force.

Having signed three bonds of the same tenor and date either one thereof being accomplished, the other two are to be of no effect.

Executed in presence of [*Signature.*] [SEAL.]

BROKER'S ORDER—TO BUY (*OR* SELL) STOCK.

CHICAGO, ILL., —— 19——

B. R. and S., STOCK BROKERS,

Please (buy *or* sell) for my account and risk shares (*description*).

This order good until countermanded.

[*Signature.*]

BROKER'S RECEIPT—FOR MONEY FOR STOCK.

$—

Received of A. B. dollars, for shares stock.
To be transferred to .

[*Signature.*]

BROKER'S STATEMENT—OF ACCOUNT, ETC.

CHICAGO, ILL., —— 19——

B., R. and S., STOCK BROKERS, etc,
Bought for A. B.

100 Shares ——	$ ——
" " ——	——
Commission 12½	——
	——
	$ ——

Received Payment
[*Signature.*]

BILL OF EXCHANGE, OR DRAFT—GENERAL FORM.

$— NORTHAMPTON, MASS., ——, 19——

days (*or* months) after sight (*or* date) pay to C., or order, dollars, value received on account of . (*or* and charge to account of)
To B. (at)

[*Signature.*]

BILL OF EXCHANGE, OR DRAFT—AT OR AFTER SIGHT.

$—. NEW HAVEN, CONN., ——, 19——

At Sight (*or* days after sight) pay to the order of P. E. dollars, and charge the same to the account of
To D. E. (at) .

[*Signature.*]

BILL OF EXCHANGE, OR DRAFT—SET OF FOREIGN.

1.

EXCHANGE FOR £ STERLING. LONDON, ENG., ——, 19——

after of this, First of exchange (second and third unpaid) pay to the order of P. E, value received and charge the same to account of
To D. E. (at) .

[*Signature.*]

$—.

CONDITION—TO INDEMNIFY ON PAYING A LOST NOTE OR BILL.

Whereas a promissory note for dollars made by (*or* a bill of exchange drawn by , upon ,) bearing date at the day of , and payable months after the date to the order of , at and indorsed by , and which is now the property of the above bounden A. B. has been lost (*or* destroyed) and cannot now be produced by him; and whereas at his request and upon his promise to indemnify and save harmless the said C. D. in the premises, and to deliver up the said note, when found to the said C. D. to be cancelled, the said C. D. has this day paid unto the said A. B. the sum of dollars, the receipt whereof the said A. B. doth hereby acknowledge in full satisfaction and discharge of the said note:

Now the condition of the above obligation is such: that if the above bounden A. B. and E. F. their heirs, executors, or administrators, or any of them shall well and truly indemnify and save harmless the said C. D. his executors and administrators from and against the said note (*or* bill) any and all damages, costs, charges and expenses and all actions of suits, whether groundless or otherwise by reason of said note (*or* bill) and also deliver or cause to be delivered up the same when and so soon as the same shall be found, to be cancelled, then this obligation is to be void, otherwise to remain in full force.

Date.

A. B. [SEAL.]
E. F. [SEAL.]

CONTRACT—GENERAL FORM.

[With Liquidations, Damages, etc.]

This agreement made this day of , A. D. , by and between A. B. of , as party of the first part, and L. M. of , as party of the second part witnesseth:

That said party of the first part for the consideration hereinafter mentioned covenants and agrees with said party of the second part, to (*here state the agreement.*)

In consideration of which said party of the second part covenants and agrees with said party of the first part to (*here state the agreement*).

And for the true and faithful performance of each and all the covenants and agreements above mentioned said parties bind themselves each to the other in the sum of as liquidated damages to be paid by the failing party.

In witness whereof, the parties to these presents have hereunto set their hands, the day and year first above written.

A. B.
L. M.

CONTRACT—Charter Party.

[General Charter.]

This charter party, made and concluded upon in the city of , the day of in the year of our Lord one thousand nine hundred and between M. R. of the , of , of the burthen of tons or thereabouts, register measurement now lying in the harbor , of the first part and S. R. of the second part, witnesseth.

That party of the first part agrees on the freighting and chartering of the whole of the said vessel with the exception of the deck, cabin and necessary room for the crew and for storage of provisions, sails and cables or sufficient room for the cargo hereinafter mentioned unto said party of the second part for a voyage from P. unto , on the terms following:

The said vessel shall be tight, staunch, strong and in every way fitted for such voyage and receive on board during the aforesaid voyage the merchandise hereinafter mentioned and no goods or merchandise shall be laden on board otherwise than from the said party of the second part doth engage to provide and furnish to the said vessel . And to pay to the said party of the first part, or agent, for the use of said vessel during the voyage aforesaid ($,) . It is agreed that the lay days of loading and discharging the vessel shall be as follows, commencing from the time the captain reports himself ready to receive or discharge cargo: . And that for each and every day's detention by default of said party of the second part, or agent, , dollars per day, day by day shall be paid by said party of the second part, or agent to said party of the first part, or agent. The cargo or cargoes to be received and delivered alongside within reach of vessel's tackle.

A commission of , per cent. upon the gross amount of this charter payable by the vessel is due to , upon the signing thereof.

To the true and faithful performance of all and every foregoing agreement we the said parties do hereby bind ourselves, our heirs, executors, administrators and assigns each to the other in the penal sum of . In witness whereof we hereunto set our hands the day and year first above written.

Signed in the presence of } M. R.
S. R.

CONTRACT—Employment.

[Clerk or Workman.]

This agreement, etc., witnesseth:

That A. B. shall enter the service of C. D. as clerk (*or whatever capacity it may be*).

That said A. B. shall faithfully, honestly, and diligently perform the duties of in the of said C. D., and well and truly obey all the reasonable commands and wishes of said C. D. during the space of from this date.

That he will guard the interests and keep the secrets of his employer, absenting himself only upon said employer's consent.

That said C. D. in consideration of said services for said A. B. pay him a yearly sum of five hundred dollars, in equal quarterly payments on the first days of January, etc.

In witness whereof the parties to these presents have hereunto set their hands, this day of .

A. B.
C. D.

CONTRACT—Sale.

[Stock and Good Will with Restraint.]

This agreement, etc., witnesseth:

That said A. B. for the consideration hereinafter mentioned shall sell to said C. D., all the stock of goods, wares and merchandise belonging to said A. B., now in the store occupied by him in , together with all furniture and fixtures thereunto appertaining and also all goods, wares and merchandise bought or contracted for by said A. B. and intended for said store together with the good will of the business heretofore carried on there by said A. B.

That said stock of goods, wares and merchandise shall be inventoried by said A. B. at its original costs for carriage or transportation, and making deduction for depreciation in value from damage, wear, tear or other causes. That all the furniture and fixtures shall be inventoried at their fair cash value.

The said inventory shall be completed within days from the date hereof and the property above specified thereupon immediately delivered to said C. D.

That said A. B. shall not at any time hereafter within from said place of business now occupied by him engage directly or indirectly, either as agent, principal, servant or otherwise in carrying on, conducting, or being interested in said business of .

That said C. D. in consideration thereof shall pay said A. B. the sum of dollars as follows: dollars upon the delivery of said goods, wares, merchandise, furniture and fixtures, dollars on the day of next in full payment thereof which sum shall by the promissory note payable at and bearing interest at the rate per cent. per annum from date until paid.

In witness whereof, the parties to these presents have hereunto set their hands, this day of .

A. B.
C. D.

CONTRACT—INSURANCE.

[Renewal of Policy.]

INSURANCE COMPANY OF .

No.——.

In consideration of the sum of dollars received of A. B. as premium on policy No. , for dollars, the same is continued in force for the term of , from the , day of , A. D. 19 , at noon until the day of A. D. 19 , at noon.

PLACE, ——, 19——

INSURANCE COMPANY.

[*Signature of Agent.*]

CONTRACT—INSURANCE.

[To Effect or Procure Insurance. See Title Assignment Post.]

This agreement, etc., witnesseth:

That (*stating the causes that make insurance necessary*).

That said A. B. will because of said premises insure or cause the same to be insured in such companies as C. D. shall designate

That in default of said insurance on or after the day of , said C. D. may effect the same at the costs and expense of said A. B. and all costs and charges proper and necessary in effecting the same together with interest thereon at the rate of per cent. per annum shall be a lien upon and charge against said , to be included in and become a part of any judgment effected against the same by reason of the premises.

In witness whereof, the parties to these presents have hereunto set their hands, this day of .

A. B.

C. D.

DEED—CONVEYANCE WARRANTY.

[With Full Covenants.]

This indenture made this day of in the year , between A. B. of county, in the State of (and W. B. his wife) of the first part and C. D. of , in the State of , of the second part witnesseth:

That the said party (*or* parties) of the first part, in consideration of the sum of dollars lawful money of the United States, to him (*or* to them) paid by the said parties of the second part, at or before the (sealing and) delivery of these presents, the receipt whereof is hereby acknowledged and the said party of the second part his heirs, executors and administrators, forever, released and discharged from the same by these presents: has and by these presents does (*or* do) grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of second part, and to his heirs and assigns, forever, all (*here follows the description of these premises*) together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title interest (dower and right of dower) property, possession, claim and demand whatsoever, both in law and in equity, of the said party (*or* parties) of the first part, of, in and to the above granted premises, and every part and parcel thereof, with the appurtenances

To have and to hold and singular the above granted premises together with the appurtenances and every part thereof, unto the said party of the second part, his heirs and assigns forever. (*If there is any encumbrance state it thus:* subject, however, to a certain indenture of mortgage for dollars, and dated , and recorded in the office of , in mortgage record at page , and also subject, etc.)

And the said A. B. (*naming only the party who warrants*) for himself, his heirs, executors and administrators, does covenant, promise and agree, to and with the said party of the second part, his heirs and assigns, that the said A. B. at the time of the (sealing and) delivery of these presents, is lawfully seized in his own rights, (*or otherwise, as the case may be*) of a good, absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances if conveyed subject to encumbrance say, subject as aforesaid, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party (*or* parties) of the first part, his (*or* their) heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged and unencumbered of and from all former grants, titles, charges, estates, judgments, taxes, assessment and encumbrances of whatever nature or kind, (*if conveyed subject to an encumbrance say*, except as aforesaid).

And also, that the said party (*or* parties) of the first part, and his (*or* their) heirs, and all and every other person or persons whomsoever, lawfully or equitably, deriving any estate, right, title or interest of, in or to the above granted premises, by, from, under or in trust for him, (*or* them) shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of said party of the second part, his heirs, assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurance in the law for the better and more effectually vesting and confirming the premises hereby granted or intended so to be in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs and assigns, or his (*or* their) counsel learned in the law, shall be reasonably devised, advised or required. And the said A. B. (*name party who warrants*) and his heirs, the above described and hereby

granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and, by these presents forever defend.

In witness whereof, the said party (*or* parties) of the first part has (*or* have) hereunto set his hand and seal (*or* their hands and seals) the day and year first above written.

Signed, sealed, acknowledged and delivered in the presence of witnesses } [*Signatures.*] [SEALS.]

GUARANTY OF PERFORMANCE.

For a good and valuable consideration by us received we, the undersigned, do hereby guarantee a faithful compliance with the terms of the above agreement upon the part of the said A. B.

S. R. {SEAL.}
T. Y. {SEAL.}

INVOICE.

To——

SPRINGFIELD, MASS., ——, 19——

Receive and forward, subject to conditions of bill of lading attached, as follows;

Marks.
Number and description of packages,
Weight,

[*Signature of shipper.*]

LEASE—SURETY.

[Suretyship, Agreement.]

In consideration of the letting of the premises above described, and for the sum of one dollar I, the undersigned, do hereby become surety for the punctual payment of the rent, and performance of the covenants in the within written agreement mentioned, to be paid and performed by the within named tenant; and if any default shall be made therein I do hereby promise and agree to pay on demand, unto the written named landlord, such sum or sums of money as will be sufficient to make up such deficiency, and fully satisfy the conditions of said agreement, without requiring any notice of non-payment, or proof of demand being made.

Given under my hand and seal, this day of , A. D. 19

[*Surety's Signature.*] [SEAL.]

LEASE—GENERAL FORM.

This (agreement, conveyance, indenture *or*) lease, made this day of , between A. B. of party of the first part and C. D., of , party of the second part, witnesseth:

That the said party of the first part does by these presents lease to the said party of the second part the following described property, to wit; (*here describe the property*)

To have and to hold the same to the said party of the second part, from the day of to the day of .

And the said party of the second part covenants and agrees with the party of the first part to pay the said party of the first part, as rent for the same, the sum of dollars, payable as follows, to wit; (*state the times and terms of payment*)

The said party of the second part further covenants with the said party of the first part, that at the expiration of the time mentioned in this lease, peaceable possession of the said premises shall be given to said party of the first part, in as good condition as they now are the usual wear, inevitable accidents, and loss by fire excepted; and that upon the non-payment of the whole or any portion of the said rent at the time when the same is above promised to be paid, the said party of the first part may at his election, either distrain for said rent due, or declare this lease at an end, and recover possession as if the same was held by forcible detainer; the said party of the second part hereby waiving any notice of such election, or any demand for the possession of said premises.

The covenants herein shall extend to and be binding upon the heirs, executors and administrators of the parties to this lease.

In witness whereof, the parties hereto have hereunto set their hands and affixed their seals the day and year first above written.

[*Signature of lessor.*] [SEAL.]
[*Signature of lessee.*] [SEAL.]

LEASE—FARM.

[Year to year, Mode of Husbandry, etc., Memorandum.]

This agreement, conveyance and indenture or lease made this day of , between A. B., of , of the one part and C. D., of , of the other part, witnesseth:

That said A. B. lets, and the said C. D. agrees to take and hold of him as tenant, all that, (*describe the property*) situate, (*describe the location*). From day of next ensuing, upon the terms following that is to say:

Said tenant shall be deemed as tenant from year to year;

That said tenant enter and take possession of said premises on next;

That either party may determine the tenancy by a notice in writing, months before the expiration of any year from the day of next preceding;

That said tenant shall go out of possession at the expiration or termination of his term;

That the rent of said premises shall be dollars per annum, payable in half yearly payments on, etc., without deduction on account of any tax or assessment now in existence or hereafter to be imposed, except, etc., which is to be paid by the said C. D.;

That the said tenant agrees to cause the following repairs to be made, (*here state what repairs*) and to keep the buildings in a tenantable repair;

That said tenant agrees to keep the gates and fences in good repair, said tenant finding rough timber or fencing stuff;

That said tenant shall not lop or cut any oak, etc., on the estate, except such as have usually been lopped, and those only to be used for making and repairing the fences to the estate, etc.

That said tenant shall not mow any grass or meadow land above once in any one year of his tenancy, and if he breaks up any old meadow or old pasture lands, unless with the said landlord's consent, in writing, then he shall pay the further yearly rent of dollars for every acre so broken up and after that rate for any part of an acre.

That said tenant may crop the arable land in each year as follows, viz: one equal third part thereof with wheat or barley, one other third equal part with beans, pease, clover, or oats, etc., and the remaining third part to lie in fallow.

That said land shall not be cropped with wheat twice, or barley twice, in any period of three years.

That the said tenant shall use and consume on the farm all hay and straw made and grown thereon.

That said tenant shall use and spread dung and manure arising or made on the farm, in such manner as that every acre in tillage of the farm aforesaid may be well manured once in every three years of his tenancy (except that all hay and wheat straw on the farm unconsumed at the expiration of the tenancy may be purchased by the landlord or succeeding tenant, at a fair valuation by two indifferent persons, one to be named by each party).

That said tenant shall leave on the premises, without compensation, not only all cut and white straw arising upon or from the premises and remaining unconsumed thereon at the expiration of his tenancy, but also all dung and manure arising or made on the farm, and then remaining unconsumed.

That said tenant shall keep clean, by well hoeing twice at the least and weeding all the land whilst cropped with beans, pease, clover, etc.

That said tenant shall endeavor to prevent any injury by persons, cattle or sheep, to any of the hedges, or trees, or fences, and to preserve the same, and not to do any injury to timber or any other trees in taking such loppings as before allowed to him;

That said party shall not crop or sow any of the land with rape, flax, hemp, etc.

That said tenant shall not underlet or assign the premises or any part thereof, except, etc.

That said tenant on quitting the farm shall receive such pecuniary compensation for improvements in fencing, etc., as to arbitrators one of which arbitrators shall be nominated by each party and if either neglect to nominate his arbitrator the other party made nominate both arbitrators shall award, which arbitrators shall abate according to the benefit derived by the tenant from such repairs, improvements and additions, and take into consideration how far, at the expiration of the tenancy, they may be beneficial to the estate.

In witness whereof, the parties hereto, have hereunto set their hands and affixed their seals the day and year first above written.

A. B.
C. D.

LEASE—Ground.

This (agreement, conveyance, indenture *or*) lease made this day of , by and between A. B. of , party of the first part, and C. D. of , party of the second party witnesseth:

That the said party of the first part for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and informed by the party of the second part, has demised and leased to the party of the second part all those premises situated in the of , in , county, and State of , known and described as follows, to wit; (*here give the description of the premises*).

To have and to hold the above described premises, with the appurtenances, unto the party of the second part, from the day of , for, during and until the day of .

And the party of the second part, in consideration of the leasing of the premises aforesaid, does covenant and agree with the party of the first part.

That he will pay to the party of the first part as rent for said leased premises at the office , in , the sum of (*state the annual rent*) April, July, October and January, (*or otherwise*) in each year.

That the said party of the second part will pay or cause to be paid, all water rates and all taxes and assessments that may be laid, charged or assessed on said demised premises, pending the existence of this lease.

That if any time after any tax, assessment or water rate shall have become due or payable, the party of the second part, or his legal representative, shall neglect to pay such water rates, tax or assessment, it may be lawful for the party of the first part to pay the same at any time thereafter, and the amount of any and all such payments so made by the party of the first part shall be deemed and taken, and are hereby declared to be so much additional and further rent, for the above demised premises, due from and payable by the party of the second part; and may be collected in the same manner, by distress or otherwise as is hereinafter provided for the collection of other rents to grow due thereon;

That the whole amount of rent reserved, and agreed to be paid for said above demised premises, and each and every instalment thereof, shall be and is hereby declared to be a valid and first lien upon any and all buildings and improvements on said premises, or that may at any time be erected, placed, or put on said premises by said party of the second part, or his heirs, executors and administrators or assigns and upon his or their interest in this lease, and the premises hereby demised.

That whenever, and as often as any instalment of rent or any other amount above declared to be deemed and taken as rent, shall become due and remain unpaid for one day after the same becomes due and payable said party of the first part, his heirs, executors, administrators, agent, attorney or assigns, may sell at public auction to the highest bidder for cash after having first given ten days notice of the time and place of such sale in some newspaper published in all the buildings and improvements on said premises, and all the right, title and interest acquired by said party of the second part, under this lease, to the premises herein described, and as the attorney of said party of the second part hereby irrevocably constituted, may make to the purchasers thereof a suitable and proper transfer bill of sale or deed of the same and out of the proceeds arising from such sale, after first paying all costs and expenses of such sale, including commissions and attorney's fees, retain to himself the whole amount due on said lease, up to the date of said sale, rendering the surplus (*if any*) to said party of the second part, his heirs, executors, administrators, agent, attorney, or assigns, which sale shall be a perpetual bar to and against all rights and equities of said party of the second part, his heirs and assigns, in and to the property sold.

That, at the expiration of the time in this lease mentioned, said party of the second part will yield up said leased premises to the party of the first part in as good condition as when the same were entered upon by the party of the second part, loss by fire or inevitable accident and ordinary wear excepted.

That neither said party of the second part nor his legal representatives will underlet said premises or any part thereof, or assign this lease without the written assent of said party of the first part first had and obtained thereunto, nor use or suffer them to be used for any purpose calculated to injure the reputation of the premises or of the neighborhood or to impair the value of the surrounding neighborhood property for present use or otherwise. It is expressly understood and agreed, by and between the parties aforesaid.

That if the rent above reserved, or any part thereof shall be behind or unpaid on the day of payment whereon the same ought to be paid, as aforesaid or if default shall be made in any of the covenants herein contained to be kept by the party of the second part, his executors, administrators or assigns, it shall and may be lawful for the party of the first part, or his heirs, executors, administrators, agent, attorney or assigns, at his or their election, to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to re-enter, and the party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy as of his or their first and former estate; and to distrain for any rent that may be due thereon, upon any property belonging to the party of the second part, whether the same be exempt from execution and distress by law or not; and the party of the second part, in that case hereby waives all legal rights which he now has, or may have, to hold or retain any such property under any exemption laws now in force in this State, or in any other way.

That it is intended hereby to give the party of the first part, his heirs, executors, administrators, agent, attorney or assigns a valid and first lien, upon any and all the goods, chattels or other property belonging to the party of the second part, as security for the payment of said rent, in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding.

That if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, agent, attorney or assigns, as aforesaid, or in any other way, the party of the second part does hereby covenant and agree to surrender and deliver up said above described premises and property, peaceably, to the party of the first part, or his heirs, executors, administrators, agent, attorney or assigns, immediately upon the determination of said terms, as aforesaid.

That if the said party of the second part, or his legal representatives, shall remain in possession of the same one day after notice of such default, or after the termination of this lease, in any of the ways above named, he or they shall be deemed guilty of a forcible detainer of the premises, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

That said party of the first part hereby waives his right to any notice from said party of the second part, of his election to declare this lease at an end, under any of its provisions, or any demand for the payment of rent, or the possession of premises leased herein; but the simple fact of the non-payment of the rent reserved shall constitute a forcible entry and detainer as aforesaid.

That said party of the second part shall not remove any buildings or other improvements from said premises without written consent of said party of the first part.

That the said second party shall pay and discharge all costs and attorneys' fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

It is further understood and agreed, that all the conditions and covenants contained in this lease shall be binding upon the heirs, executors, administrators and assigns of the parties to these presents respectively.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in presence of } A. B. {SEAL.} C. D. {SEAL.}

MORTGAGE, ETC.—BOND.

[Secured by a Mortgage.]

Know all men by these presents; That I, A. B., of , in county and State of , am held and firmly bound unto C. D., of , in county and State of , in the sum of (*insert the amount of the penalty, usually twice as much as the actual debt*) to be paid to the said C. D., his heirs, executors, administrators or assigns, and to this payment I hereby bind myself, my heirs, executors and administrators, firmly by these presents.

Sealed with my seal this day of .

The condition of the above obligation is: that if I, the said A. B. or my heirs, executors or administrators, shall pay or cause to be paid unto the said C. D. the sum of (*here insert the actual amount of debt or the sum to be secured*) on the day of , with interest at the rate of per cent per annum, payable six months from the date hereof and every months afterwards, until the said sum is paid, then the above obligation shall be of no effect; and otherwise it shall remain in full force. And I further agree and covenant that if any payment of interest be withheld or delayed for days after such payment shall fall due the said principal sum and all arrearage of interest thereon, shall be and become due immediately on the expiration of days, at the option of said C. D., his executors, administrators or assigns.

Executed and delivered in the presence of } A. B. [SEAL.]

MORTGAGE—REAL PROPERTY.

[In which the mortgagor waives his right on his default for thirty days (*or any other stated period*), to pay any interest falling due, the whole debt, principal and interest, shall become due and collectible immediately, and the mortgagee shall have the right to proceed to collect the whole sum due.]

This (conveyance, *or* indenture, *or*) mortgage made the day of , in the year of our Lord , between A. B., of the city of , in county and State (*or* commonwealth) of , of the first part, and C. D., of said city, county and State (*or* commonwealth) aforesaid, of the other part witnesseth:

That whereas the said A. B. in and by a certain obligation (*or* writing obligatory), under his hand and seal duly executed, bearing even date herewith, stands bound unto the said C. D. in the sum of five thousand dollars, lawful money of the United States of America, conditioned for the payment of the just sum of two thousand and five hundred dollars, like lawful money as aforesaid, in (five) years from the date thereof, together with lawful interest for the same, the first payment of interest to be made on day of next ensuing the date thereof, and thereafter (half-yearly) from that day without any fraud or further delay:

Provided, however, and it is thereby expressly agreed:

That if at any time default shall be made in the payment of interest on said principal for the space of thirty days after any payment thereof shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said C. D., or his executors, administrators, or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, any thing therein contained to the contrary thereof notwithstanding, as in and by the said in part recited obligation and the condition thereof, relation being thereunto had, may more fully and at large appear:

That the said A. B., as well for and in consideration of the aforesaid debt or sum of two thousand and five hundred dollars and for the better securing the payment of the same, with interest, unto the said C. D., his heirs, executors, administrators, and assigns, as well in discharge of the said in part recited obligation as for and in consideration of the further sum of one dollar, unto the said A. B. in hand well and truly paid by the said C. D. at and before the sealing and delivering hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release and confirm unto the said C. D. and his heirs and assigns, all that messuage, piece or parcel of land, etc., (*here give the description of the land conveyed*), together with all and singular the rights, liberties, privileges, improvements, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof.

To have and to hold the said messuage, piece or parcel of land above described, hereditaments and premises hereby granted, or mentioned or intended so to be, with the appurtenances, unto the said C. D., his heirs and assigns to and for the only proper use and behoof of the said C. D., his heirs and assigns forever.

Provided always, nevertheless, that if the said A. B., his heirs, executors, administrators, or assigns, do and shall well and truly pay or cause to be paid unto the said C. D., his executors, administrators, or assigns, the aforesaid debt or sum of two thousand five hundred dollars on the day and time hereinbefore mentioned and appointed for payment of the same, together with lawful interest as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of any thing for or in respect of any taxes, charges or assessment whatsoever, that then and from thenceforth as well this present indenture and the estate hereby granted, as the said in part recited obligation, shall cease, determine and become void, anything hereinbefore contained to the contrary thereof in any wise notwithstanding.

Provided further, in case of default in the payment of the interest at any time falling due, for the space of thirty days as aforesaid, or any part thereof, that thereupon it shall be lawful for the said C. D., his executors, administrators, or assigns, to sue out forthwith

a writ of *scire facias* upon this present indenture of mortgage and to proceed at once thereon to recover the principal moneys hereby secured, and all interest thereon, according to law, without further stay, any law or usage to the contrary notwithstanding.

And further, the said mortgagor doth hereby for himself, his heirs, executors, administrators and assigns, expressly waive, relinquish and dispense unto C. D., the said mortgagee, his heirs, executors, administrators and assigns, all and every provision and provisions in the Act of Assembly (*or* Legislature) of the State (*or* commonwealth) of (approved *or*) passed on the day of , entitled "An Act," etc., so far as the same may exempt the same hereby mortgaged lot of land and appurtenances, and any part thereof, from levy and sale, by virtue of any writ of execution that may be issued upon any judgment that may be obtained or entered in any action for the recovery of the mortgage money herein mentioned to be paid, and any interest due thereon, and of the costs of such action and execution; so that it shall be lawful for C. D., the said mortgagee, his heirs, executors, administrators or assigns to proceed by execution to levy upon and sell the said hereby mortgaged lot of ground, any part thereof, with the appurtenance as aforesaid, in the same manner and to the same extent, and to the same effect, to all intents and purposes as if the said Act of Assembly (*or* Legislature) had not been (approved *or*) passed.

In witness whereof the said parties to these presents have interchangeably set their hands and seals hereunto. Dated this day and year first above written.

[*Signature of witnesses.*] [*Signatures.*] [SEALS.]

MORTGAGE—REAL PROPERTY.

[Discharge or Release. See Release, etc., Satisfaction, etc., below.]

State of , county of , ss.

I, C. D., of , in county, State of , do hereby certify that a certain mortgage, bearing date the day of made and executed by A. B., of in county, State of , of and upon the following described premises, to wit: (*describing them*), and recorded in the office of , in county, State of , in book of mortgages, page on the day of , at o'clock in the M, is paid. And I do hereby consent that the same be discharged of record.

Dated the day of

Executed in presence of } C. D. [SEAL.]

MORTGAGE—REAL PROPERTY.

[Release of a Part.]

This mortgage made this day of , between C. D., of in county, State of , party of the first part, and A. B., of , in county, State of , party of the second part:

Whereas, the said party of the second part by indenture of mortgage, bearing date the day of for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the lands hereinafter described are part, unto the said party of the first part:

And whereas, the said party of the first part at the request of the said party of the second part has agreed to give up and surrender the lands hereinafter described unto the said party of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on the said mortgage.

Now this indenture witnesseth:

That the said party of the first part, in pursuance of the said agreement, and in consideration of dollars to him duly paid at the time of the execution and delivery of these presents, the receipt of which is hereby acknowledged, has and by these presents does grant, release, quitclaim and set over unto the said party of the second part, all that part of the said mortgaged land (*describing all that part of the mortgaged land which it is intended to release accurately and carefully, distinguishing it from that which is retained*), together with the hereditaments and appurtenances thereto belonging; and all the right, title and interest of the said party of the first part of, in and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified may remain to the said party of the first part as heretofore. To have and to hold the lands and premises hereby released and conveyed to the said party of the second part and heirs and assigns, to his and their use and benefit forever, free, clear and discharged of and from all lien and claim under and by virtue of the indenture of mortgage aforesaid.

In witness whereof the said party of the first part has hereunto set his hand (and seal) the day of

Executed and delivered } C. D.
in presence of }

[For form of Acknowledgment see that title.]

MORTGAGE—DISCHARGE OF REAL PROPERTY.

State of }
County of } ss.

Do hereby certify, that a certain indenture of mortgage bearing date the day of , one thousand nine hundred and made and executed by and recorded in the office of , county of , in liber of mortgages, page , on the day of in the year one thousand nine hundred and , at o'clock in the , is paid. And I do hereby consent that the same be discharged of record.

Dated the day of 19

In presence of } [*Signature.*] [SEAL.]

MORTGAGE—Discharge of Chattel Property.

State of , } ss.
County of ,

Do hereby certify, that a certain indenture of mortgage bearing date the day of , one thousand nine hundred and made and executed by and filed in the office of , county of , on the day of in the year one thousand nine hundred and , at o'clock in the , is paid. And I do hereby consent that the same be discharged of record.

Dated the day of 19 .

In the presence of { }

[*Signature.*] [SEAL.]

State of } ss.
County of }

On the day of in the year one thousand nine hundred and before me personally came , to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

MORTGAGE—Personal Property or Chattel Mortgage.

Know all men by these presents: That I, A. B., of , in consideration of the sum of dollars to me paid by C. D., of , by these presents do grant, transfer and assign unto the said C. D. all the goods and chattels, wares, effects and merchandise mentioned and specified in the schedule hereunder written:

To have and to hold, all and singular, the said goods, chattels, wares, effects, and merchandise, unto the said C. D., his executors, administrators and assigns forever.

Provided, nevertheless, that if I, the said A. B., my executors, administrators or assigns, or any of them do and shall well and truly pay unto the said C. D., his executors, administrators or assigns, the sum of , with legal interest for the same, on or before the day of , then these presents and every clause, article and thing herein contained shall cease and be void; otherwise to be in full force.

In witness whereof I have hereunto set my hand and seal this day of .

[*Signatures of witnesses.*] [*Signature.*] [SEAL.]

NOTE—Promissory—General Form.

$—. Washington, D. C., ——, 19——

days after date, for value received, I promise to pay to P. E. or bearer (*or* order) dollars.

[*Signature.*]

NOTE—Promissory—Guaranty.

[To be Indorsed on Note.]

For value received I guarantee the payment (*or* collection, *or* collectibility) of the within note.

——, 19 [*Signature.*]

NOTE—Promissory—Judgment.

[Common Form, With Waiver.]

$— Montpelier, Vt., ——, 19——

———after date promise to pay , or order, dollars, with interest at the rate of per cent per annum from maturity until paid, and without defalcation.

And do hereby confess judgment for the above sum with interest and costs of suit, a release of all errors and waiver of all rights to inquisition and appeal, and to the benefit of all laws exempting real or personal property from levy and sale.

[*Signature.*] [SEAL.]

NOTE—Promissory—On Demand.

$— Buffalo, N. Y., ——, 19——

On demand I promise to pay P. E. or order (*or* bearer) dollars, for value received.

[*Signature.*]

NOTE—Promissory—Payable at a Particular Place.

$— Richmond, Va., ——, 19——

———days after date I (*or* we or either of us, *or* we jointly or severally) promise to pay to the order of P. E. at the Bank in (*or other place, designating it*) dollars with interest. Value received. [*Signature.*]

OPTION—General Form to Purchase.

I hereby extend the right or option to , in consideration of $ to me in hand paid by , the receipt whereof is hereby acknowledged, to purchase for $ upon terms to be hereafter mutually agreed upon; but provided the said shall exercise his option within days from the date hereof.

Dated

Witness [*Signature.*]

PARTNERSHIP—Contract.

[General Form.]

This agreement, made and entered into by and between A. B., C. D., E. F. and G. H., witnesseth:

That said A. B., C. D. E. F. and G. H. shall associate themselves together in the trade of buying, wholesaling and retailing all sorts of goods, wares and merchandise belonging to the trade and business of

That said partnership shall continue from the date of this agreement for and during the term of ten years next ensuing.

That to this end and purpose the said A. B. has contributed as stock the sum of one thousand dollars; and said C. D. the sum of one thousand dollars; and the said E. F. the sum of one thousand dollars; and the said G. H. the sum of one thousand dollars; to be used and invested, and employed in common between them to their general advantage in the management of said business.

That said parties shall not at any time hereafter use, follow, or exercise said business or occupation, or any other, during said term, to their private benefit or advantage, but shall, at all times during said term, with their utmost skill and ability, conduct and act only for their mutual advantage with said stock and for its increase.

That said parties shall discharge all rents and expenses of said business equally between them.

That all profit, gain and increase that shall arise by reason of said joint business shall be equally divided between them share and share alike.

That all losses and decrease that shall happen in said business, by reason of bad debts or otherwise, shall be borne and paid equally between them share and share alike.

That there shall be kept, during said term and joint business, just and true books of account, wherein each of said parties shall enter and set down the money by him received and expended, the goods and merchandise by him bought and sold, and all matters and things concerning said partnership, so that either of said partners may at any time have free access thereto.

That said partners shall once every three months, upon the request of any of them, make and render to each other, or to his legal representatives, a true and perfect account of all profit and gains by them made and of all losses sustained; and also of all receipts, disbursements and other things whatsoever concerning said partnership, and thereupon shall cancel, adjust, pay and deliver unto each other their equal shares of the profit so made if any.

That at the end of said term of ten years if said partnership be not sooner determined, in which case the said partners or their survivors shall make a final and true account of all things aforesaid, and in all things well and truly adjust the same.

That upon making such account of stock, goods, wares and merchandise, and the profit, gain and increase thereof which remain the same shall be equally divided between them or their survivors share and share alike.

In witness whereof we have hereunto set our hands this day of

[*Signatures of witnesses.*]

A. B.
C. D.
E. F.
G. H.

PARTNERSHIP—NOTICE OF TERMS OF.

[Partnership Notice.]

Notice is hereby given that A. B., C. D., E. F. and G. H. as partners, under the name (*or* firm) of B. and D. will, on the day of , commence the business of , and on the day of , said partnership will terminate.

The names of the general partners and their respective places of residence are as follows: A. B., , county, State of ; C. D., , county, State of .

The names of the special partners and their respective places of residence are as follows: E. F. , county, State of , and G. H. , county, State of .

The amount of the capital which each of said special partners has contributed to the common stock of said partnership is as follows: E. F., dollars, and G. H., dollars.

Date ,

[*Individual Signature.*] [SEAL.]

State of } ss.
County of }

P. P. being duly sworn, says that he is the printer of (*or* is in the employ of J. K., the printer of) the , a newspaper published in , and of general circulation in said county; and that the notice, of which the annexed is a true copy, was published for consecutive weeks in said newspaper, commencing on the day of P. P.

Subscribed to and sworn to before me, this day of

[*Official Signature.*] [SEAL.]

PARTNERSHIP—NOTICE OF DISSOLUTION.

[Dissolution of Partnership.]

The partnership heretofore existing under the name of B. & D. wherein A. B., of , county, State of , and C. D., of , county, State of , were general partners, and E. F., of , county, State of , and G. H., of , county, State of , were special partners, is this day of , A. D. , dissolved by mutual consent.

The affairs of the firm will be adjusted by C. D. at , etc.

A. B.
C. D.
E. F.
G. H.

POWER OF ATTORNEY—General.

Know all men by these presents: That I, A. B., of , have made, constituted and appointed, and by these presents do make, constitute and appoint C. D. of , my true and lawful attorney in fact, for me, and in my name, place and stead, to *(here insert the power conferred)*. That I give unto my said attorney full power to do every thing whatsoever requisite and necessary to be done in the premises, as fully as I could if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney shall lawfully do, or cause to be done, by virtue hereof.

In witness, whereof I hereunto set my hand this day of .

[*Signature.*]

PROTEST—General Form.

[Copy of Bill (*or* Note) and Indorsement, etc.]

United States of America, State, (commonwealth, *or* territory, etc.,) county, ss. On day of , A. D., at the request of A. B., the holder of the original bill of exchange (*or* promissory note) of which the above is a true copy, I, N. P., a notary public in and for said county of , presented the same to D. E., the drawer (*or* maker) therein named, (*or if payable at a particular place, say* at , in said State, (commonwealth, *or* territory) and demanded acceptance (*or* payment) thereof, which was refused. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do solemnly and publicly protest, as well against the drawer (*or* maker and indorsers) of the said bill (*or* note) as against all others whom it does or may concern, for exchange or re-exchange, and all costs, damages and interest accrued, and to be hereafter incurred for want of acceptance (*or* payment) of the same:

And on the same day I served due notice of the protest aforesaid upon the following named persons by depositing such notice in the post-office at , in said State (commonwealth *or* territory) in a sealed envelope, with the postage prepaid addressed to said as follows:

A notice for , directed to .
A notice for , directed to .

In testimony whereof I have hereunto set my hand and affixed my notarial seal, the day and year aforesaid.

Protest fees dollars.

[*Signature of Notary Public.*]
[NOTARIAL SEAL.]

RECEIPT—Account Generally.

$——. Holyoke Mass., ——, 19——

Received of A. B. the sum of dollars on account (for).

[*Signature.*]

RECEIPT—In Full of all Demands.

$——. Albany, N. Y., ——, 19——

Received of A. B. the sum of dollars in full of all demands against him.

[*Signature.*]

RECEIPT—Interest.

Received this day of , of C. D. dollars in full, for one year's interest of one thousand dollars, due me the day of , on a bond of said C. D. dated the day of .

[*Signature.*]

RECEIPT—Rent.

$——. St. Louis, Mo.,——, 19——

Received of A. B. the sum of dollars, one month's rent due this day for dwelling house in Street, in

[*Signature.*]

WILL—Real and Personal Estate.

I, A. B., of the town of , in the county of , State of , (merchant), declare this to be my last will and testament.

1. I give and bequeath to my wife, C. B., dollars, to be used by her in lieu of dower.

2. To my son, E. B., dollars, (which said several legacies I direct to be paid within after my decease).

3. I give and devise to my son, E. B., aforesaid, his heirs and assigns, all (here designate property), together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining; to have and to hold the premises above described to the said E. B., his heirs and assigns forever.

4. I give and devise all the rest, residue and remainder of my real property, of every name and nature whatsoever, to my said daughter, M. B., and my daughter, O. B., to be divided equally between them, share and share alike.

5. I give and bequeath all the rest, residue and remainder of my personal property, of what nature or kind soever, to my said wife, C. B.

6. I hereby appoint E. B. the sole executor of this will, revoking all former wills by me made.

In witness whereof I, (*name of testator,*) have to this my last will and testament, consisting of sheets of paper, subscribed my name (and set my seal) this day of , 19

Subscribed by the testator in the presence of each of us (*or* acknowledged by the testator to each of us to have been subscribed by him), and at the same time declared by him to us to be his last will and testament, and thereupon we, at the request of the testator, sign our names hereto as witnesses, this day of 19 , at .

[*Signature and addresses of witnesses.*]

[*Signature, with seal.*]

SPECIAL CLAUSES TO BE INSERTED IN A WILL IF DESIRED.

[For Pecuniary Legacy.]

I bequeath to my said wife the sum of dollars, (to be paid to her within months after my death.)

[For Legacy of Debt.]

I bequeath to A. B. any debt which at the time of my decease shall be owing from him to me, together with any interest then due thereupon.

[For Legacy of a Share under another Person's Will.]

And whereas under the will of (*name*) I am entitled to a share in his residuary personal estate, I bequeath the said share to (*name.*)

[For Bequest of the Good Will of a Business.]

I give and bequeath the good will and benefit of the business of which I am now carrying on at , and also all my capital and property which shall be employed therein at my decease, and also the leasehold premises situate and being No. , at , aforesaid, wherein the said business is now being carried on, for all my term and interest therein unto my son , absolutely.

[For Legacies to Executors.]

And I do hereby nominate and appoint the said C. D. and E. F. executors of this will. And I bequeath to such of them as shall act in the execution of this my will the sum of dollars apiece.

[Bequest to a Corporation.]

I give and bequeath to (*stating if possible the full name of the corporation, or, if not certainly known, describing it*) at , the sum of dollars to be applied to the uses of said Society, (*or* college, *or otherwise. Any particular object, such as the endowment of a professorship, may be here stated*).

[For Direction that Legacies shall be Paid Free from Duty.]

And I direct that all legacies given by my said will, or any codicil thereto, shall be paid free from legacy, duty or tax.

[For Declaration that Money Advanced by the Testator during his Life to his Children shall be Deducted from their Portions or Shares of his Estate.]

I declare that all such moneys as I have or shall have advanced to any of my said children, or as shall be owing to me from any of them at my decease, shall be considered as part of my residuary estate, and shall be deducted from his, her or their respective shares.

[Direction as to Payment of Annuities.]

And I direct that the said annuity of dollars to be paid, clear of all deductions except legacy, duty, or tax, by equal half-yearly payments, the first payment to be made at the end of six calendar months from my death.

[Devise to Executors in Trust, with Power to Sell, etc.]

I give and devise all my real and personal estate, of what nature or kind soever, to C. D. and E. F., my executors hereinafter appointed, in trust, for the execution of my will, with power to sell and dispose of the same, at public or private sale, at such times, and upon such terms, and in such manner as to them shall seem meet. (Provided, however, that no part of my real estate shall be sold until after the expiration of years from my disease.)

WILL—CODICIL TO—GENERAL FORM.

[Revoking several Legacies.]

Whereas I, A. B., of , have by my last will and testament in writing, duly executed, bearing date, etc., given and bequeathed to, etc.

Now I, the said A. B., being desirous of altering my said will in respect to the said legacies, do therefore make this present writing, which I will and direct to be annexed as a codicil to my said will, and taken as part thereof; and I do hereby revoke the said legacies by my said will given to , and I do give to each of them the said and , the sum of dollars only; and I give unto etc.

And I do ratify and confirm my said will in everything, except where the same is hereby revoked and altered as aforesaid.

In witness whereof I have hereunto set my hand this day of —— 19——

[*Signature, with or without seal.*]

Subscribed by the testator in the presence of each of us (*or* acknowledged by the testator to each of us to have been subscribed by him), and at the same time declared by him to us to be a codicil to be annexed to his last will and testament, and thereupon we, at the request of the testator, sign our names hereto as witnesses, this day of , 19 , at

[*Signatures of witnesses.*]

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